Meanwhile, we will go ahead with what we have. We are not out looking for more. We are not trolling for additional subjects. But we would be foolish to foreclose any further referral should one come. The gentleman from Massachusetts is convinced it is over and done with. The language of the introduction indicates otherwise.

Mr. FRANK. Would the gentleman yield?

Mr. BRYANT. I might at the end. Okay.

Mr. FRANK. Mr. Chairman, I think this is really the crux of it, absolutely the crux of it. Because you say Kenneth Starr was almost finished when he was assigned Monica Lewinsky. He was not assigned it. He ran in and grabbed it. He structured it to get it. This is not a case where he was withheld from these other things by the assignment. He was delighted to get it because he was about to, I think, come up with zero. And the point is that there was no reason why he had to stop looking at these other things. He didn't have to interrupt Whitewater. The fact is that we have people here particularly, frankly, on the right wing who don't want to admit that all of this Whitewater, FBI files, travel office and other stuff has come to nothing.

I think it is poisoning the atmosphere. It is being used as kind of a way to try and discredit the President. If Kenneth Starr wants to make a referral, then we will look at it. But to continue this kind of limbo with these things, where you invoke that they still may be around when they have not been able to find anything in 4 years, poisons the atmosphere.

Mr. BRYANT. Mr. Chairman, as I hurriedly read over this amendment, it is deja vu all over again. I thought we just voted on an amendment that would, in essence, convene a hearing on what is impeachable and then go to the facts, which is exactly opposite of the way we read the Rodino hearings and the way that we have been setting our course so far, that we want to get the facts first and then talk about what is impeachment.

The only difference I see between what we just voted down, and now, is that maybe we have taken out the time limit, but we are still talking about a very limited scope of Monica Lewinsky only and a situation where we put the hearing to determine what is an impeachable offense ahead of a determination of what the facts are. Again, very similar to the vote that we just took and voted down.

Now, I have some concerns with it, too, in terms of how would you go about accepting the evidence here. You have got—in the report on the issue of obstruction of justice—you have got Ms. Currie saying one thing, Mr. Lewinsky saying another thing, the President saying a third thing. How would you weigh the credibility and determine who is right there?

On the issue of perjury, you have the President saying, this particular sexual act did not occur. You have Ms. Lewinsky saying, it did occur. How do you weigh the credibility and decide who is right and who is wrong without some sort of factual determination?

I will defer to Mr. Berman since it is his amendment.

Mr. BERMAN. I appreciate that. This is not hard. This is not a courtroom, but let us pretend it is for a second. This is the motion for summary judgment. Take every fact and give credence to the Starr perspective on the facts.

Mr. BRYANT. There is a conflict in fact. The President says X, Ms. Lewinsky says Y.

Mr. BERMAN. I read the Starr report. I saw the way he resolved the factual disputes.

Mr. BRYANT. But we don't accept his conclusions under your amendment.

Mr. BERMAN. My intent in this case is to take the facts and construe them from his perspective. And where they conflict, I am willing to say, okay, we take your story. Now let us discuss whether that is impeachable.

And the point to doing this. I know Peter Rodino, but I am no Peter Rodino—is, one, we have an Independent Counsel law and a 595(c) referral. We didn't have that at the time of Watergate.

And, secondly, look what we might avoid that is not in the Democratic Party's interest, nor in the Republican Party's interest. It is in the country's interest to avoid prolonged hearings, if we can possibly come to a conclusion before we reach that point.

Mr. BRYANT. Well——

Mr. BERMAN. If we can't, then we have to carefully examine all of the facts and deal with all of the problems.

Mr. BRYANT. I understand the basis on which Mr. Berman is submitting this. I think it is a good-faith effort to try to work this out. But I have heard it described, and my first thought was something in the nature of a motion for summary judgment. And my recollection is, when you have a conflict in the evidence, that it is grounds for overturning that. I have a hard time resolving how we can resolve that as a committee, these types of conflicts of evidence.

I think, again, this is very similar to what we just voted on except that we are bifurcating this process, adding another step. And even if you reach that point, then you still have to come back and have that type of hearing. And we talk about the kids being out there. They are going to have to hear it then.

I would, based on, again, recognizing a very good effort to try to strike a compromise, I see this as very similar to what we just voted down. At this point, I would still be voting in opposition to this.

Mr. HYDE. The gentleman from Virginia, Mr. Scott.

Mr. CONYERS. Would the gentleman yield?

Mr. SCOTT. I will.

Mr. CONYERS. I wanted to inquire, because the debate has been excellent, and I know yours will be beautiful and conclusive, if there are other members that care to respond on this matter? Just an indication. Mr. Wexler does. Ms. Lofgren does. Mr. Watt does.

Thank you very much for yielding.

Mr. SCOTT. Thank you, Mr. Chairman.

Just two quick points. One, on the issue of focus, I think we need to remind ourselves how we got here. The initial inquiry was into a land deal over 20 years old. That is what happens when you don't have some kind of focus.

The other point I want to make is on the constitutional standard. It is true that in Watergate there was no fixed standard in Watergate, but they did have an understanding of the purpose of impeachment, the legislative history and the precedents.

And with a reasoned approach, I would agree with the gentleman from Wisconsin, there is a constitutional trap here. The trap is that if we conclude that there are no impeachable offenses even alleged, then we will not be able to proceed with a politically embarrassing hearing. That is a political trap not a constitutional trap.

And, with that, Mr. Chairman, I yield back the balance of my time.

Mr. HYDE. Mr. Canady, do you seek recognition?

The gentleman from Florida.

Mr. CANADY. Thank you.

I want to rise in opposition to this proposal. I respect the intentions of the gentleman from California, but I think that this is just a variation on the theme that we have been debating this afternoon under the resolution that was offered by Mr. Boucher.

I agree with the concerns expressed by the chairman that this would arbitrarily limit the scope of our inquiry. I think our focus should be on the Lewinsky matter. I don't know that we will ever focus on anything else or that any other information will ever come our way, but I don't think that we should be arbitrarily precluded from considering such information of impeachable offenses if that information comes to us.

I am also concerned that this proposal, the way it is structured, would actually slow down the process. I know that is not the gentleman's intention. I fully respect that. But I am concerned that the proposal, as presented, would delay the committee in conducting its analysis and weighing of the pertinent facts that are at issue here.

I also believe that it simply is wrong for us to assume the truth of facts which the President disputes. I don't think we should go through a process where we say we are going to assume that these facts, which I understand would be taken in the light most unfavorable to the President, if I understand your proposal correctly, we are going to assume these facts, most of them unfavorable to the President, are true for purposes of this analysis. I don't think that is the right way to go about doing this.

I believe that we should weigh the evidence. We should analyze the evidence. We should judge the credibility of witnesses, as any fact finder should do.

If you look at it this way, I believe it would be ill-advised for us to determine that certain assumed conduct of the President constitutes an impeachable offense with the prospect that further investigation, further weighing of the evidence, further judgment concerning the credibility of witnesses, could lead us to a conclusion that the President was not, in fact, guilty of that conduct. I think you set up a process here that I think would set a very bad precedent in this context.

Again, I fully accept that the gentleman has offered this with the best of intentions.

Let me comment on one further point that the gentleman has made, a point of which I am in sympathy. I agree that we should not have a full-scale trial of these issues here in the House. That is not the purpose of the Judiciary Committee or impeachment proceedings in the House. A full-scale trial of these matters, if it becomes necessary, should be conducted only in the Senate. But that

does not mean that we do not have responsibility from the outset to carefully review, carefully analyze, carefully weigh the evidence.

I am concerned that your proposal would unintentionally slow down that process and really prevent us from getting to that core function in a way that would be harmful to the process and would set, I believe, a dangerous precedent for future impeachment proceedings.

For those reasons, I would urge the members of the committee to oppose the gentleman's proposal.

Mr. HYDE. The question occurs on the Berman amendment.

Who is seeking recognition?

Ms. LOFGREN. Mr. Chairman, several of us have indicated an interest in speaking.

Mr. HYDE. Ms. Lofgren is recognized for 5 minutes.

Ms. LOFGREN. I just want to say, I don't know that I will use 5 minutes, but I think there are several things that fall far short of what I think would be ideal in the Berman amendment.

Number 1, on line 2, he would allow a subcommittee rather than the full committee to go through these matters of understanding.

Number 2, the constitutional standard for impeachment is invoked but the committee never reaches a conclusion. But I will say that I think the Berman amendment is an effort at compromise that ought not to be dismissed so readily, even though it does not make every one fully satisfied. I'm also concerned there is no end time involved, there is no guarantee that this would be an expeditious process. Nevertheless, thinking of the chairman's New Year's resolution, perhaps we could hope for an expeditious process.

I think that we need to take a look at some of the comments that have been made here today about the Berman proposal itself, and I think the majority has confused the issue. All over America, law professors are throwing tomatoes at their TV sets about the description or misdescription of the summary judgment motion that I have just heard here today.

Let me try to make it clear. The facts—for the purpose of a summary judgment motion—are assumed to be true only for deciding whether they meet the legal standard. If they don't meet the standard, then you back off those facts. So I think it is very important that we make that clear.

I finally want to say something that I find very alarming, very frightening, and I have heard it here in public, and I have heard it from members on the other side privately.

There seems to be the assumption that the role of the House is a minor one in an impeachment proceeding and that we will automatically, without a lot of review as to the Constitution, be voting articles of impeachment and merely send them off to the Senate for trial. That has not been the process historically in America, and it is frightening to consider that this is the view of many members of the minority, that we would make the very limited tool of impeachment, meant to be, as one law professor said, the axe behind the break-in-case-of-fire mechanism for an executive whose misbehavior has so imperiled the fabric of our institution of government, that we would convert and misshape impeachment to just pass it on to the Senate in this very politicized way. I find this alarming.

Finally, even though I think this motion falls far short of what many of us want and I assume what Mr. Berman would prefer, I am confident that, if we were to adopt this, that we would not regret it, because we will have the kind of discussion, either in the subcommittee or full committee, about the Constitution that is warranted.

I do not want to hear people say that a discussion of the Constitution is a snag or a delay. What could be more important to our deliberations than an understanding of the Constitution under which we are supposed to be operating, that each of us took an oath to uphold? I know that we all meant it and believed it. Fulfilling our oath is not a delay. That is a necessity.

I am confident that, with the eyes of the world watching us, we would then apply that standard well. I would hope that the majority would not just use its voting power to dismiss this compromise measure.

I yield the balance of my time.

Ms. JACKSON LEE. I was anguished, Mr. Berman, over your amendment, because I had indicated earlier in debate that I thought there were some facts in dispute. I made some points about the confusion dealing with the gift issue and the confusion dealing with the question of lying and whether or not you got a job in order to fill out an affidavit.

But as I listened to the debate, more importantly, as I underlined a very strong element here that I think is key, everything that we have been discussing today has been around constitutional standards. And what you are doing for this committee is you are taking us away from the clutter of the dispute of facts and you are saying, let us get down to the job and the task that is to understand the constitutional standard. I think this is a very bipartisan amendment.

Mr. HYDE. The gentlewoman's time has expired.

The question occurs on the Berman amendment. The Clerk will call the roll.

Who wants recognition?

Mr. Watt. The gentleman is recognized for 5 minutes.

Well, let us go over here. Mr. Hutchinson?

Mr. HUTCHINSON. Mr. Chairman, I primarily had some questions and some comments on this, but I want to first comment that I believe the gentleman from California is doing this in order to try to achieve some bipartisan support for what comes out of this committee. I think that is laudable. I think it would send a great signal to the people of America if that could be accomplished.

I did have some questions about this because, as I read this, first of all on the summary judgment part, I think I understand that. We would basically accept the allegations that are made in the report as being true and the question would be whether obstruction of justice or perjury as outlined in the report would measure up to an impeachable offense. Am I correct in that understanding?

Mr. BERMAN. No, Mr. Hutchinson. Not quite. If you will give me 1 minute to respond.

Mr. HUTCHINSON. Well, 30 seconds.

Mr. BERMAN. We are not a court of law. We are not a jury. We will not ultimately decide whether something is perjury or obstruc-

tion of justice. We will look at facts and determine if they constitute grounds for impeachment.

Mr. HUTCHINSON. Is that the reason it is confined to the narrative portion of the referral?

Mr. BERMAN. Yes.

Mr. HUTCHINSON. The second question, I want to make clear, the way I read this, it would not be limited in scope, but I think your comments as well as those from the gentleman from Massachusetts indicate that it would be limited in scope.

Mr. BERMAN. Yes, it is limited to the referral from the Independent Counsel.

The chairman and the ranking member have asked the Independent Counsel if he has any more substantial and credible information that shows presidential conduct that might justify impeachment, and if he does, to please send it to us quickly. If we receive another 595(c) referral, I say we should look at that. But now we shall focus on what we have.

Mr. HUTCHINSON. Let me reclaim my time. I know that we need to move on.

I thank the gentleman from California. I do appreciate what he has done and his honest answers to this. I think if we are going to examine the standards for impeachment that we have to consider the whole report. I would be a little bit concerned about restricting it to the narrative portion of the report.

Also, we want to keep this process moving, and it would be a concern to me if we had to go back to the full House for an additional vote that would slow it down, and we would not be able to get to a resolution of this in a timely fashion.

So, with that, Mr. Chairman, I yield back the balance of my time.

Mr. FRANK. Will the gentleman yield?

Mr. HYDE. Someone over here. Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. Maybe I should lean forward in my chair consistently so the chairman can see me. I seem to be having a little trouble.

Mr. HYDE. I am not as flexible as I used to be, Mr. Watt. I certainly don't deny you any opportunity to speak.

Mr. WATT. Well, I would hope not.

Mr. FRANK. This amendment will give you a chance to be more flexible, Mr. Chairman.

Mr. WATT. I yield to Mr. Frank.

Mr. FRANK. I thank the gentleman.

I want to say, Mr. Berman may have been taken for granted, but there are two lines of his amendment that people are forgetting about. If we decide that the narrative, if assumed to be true, would be grounds for impeachment, then look at lines 13 and 14, then the committee shall investigate fully and completely whether sufficient grounds exist, et cetera. In other words, it is first the summary judgment proceeding, but if, in effect, on summary judgment type rules we decide it is impeachable, then look at lines 13 and 14. Then the committee shall investigate fully and completely whether sufficient grounds exist. That is fact-finding. That is everything.

So much of the arguments are just about a different amendment. Mr. Berman has full fact-finding. If we first determine that the

facts alleged are impeachable, then we go into this process and look at lines 13 and 14.

Mr. WATT. I thank the gentleman. I acknowledge a level of frustration here that is growing, because I am not sure what rules we are going to be—what process we are going to be following in this committee, what standards we are going to be applying in making our decision. We have how many people on this committee? Thirty-seven. I bet you we got 37 different opinions now about what constitutes impeachment.

You add the two that the majority counsel and the minority counsel have, that is 39. They have no idea how to go and marshal the facts because there are light years between what the majority counsel said and what the minority counsel said, light years. We don't have any common ground here that I am able to decipher.

I am happy to yield to the gentleman.

Mr. CANNON. I agree with your premise that there are 37 opinions. They are, generally speaking, highly informed opinions. Most of us are lawyers. Most of us studied constitutional law. Those who have not, worked very hard to figure it out.

I fail to understand why this is not just an attempt to delay the process, since I can't imagine anybody on either side changing their vote based upon their background and understanding of constitutional law and, secondly, understanding what the Starr report already says.

Mr. WATT. Let me reclaim my time. Because I acknowledge that this is not a perfect vehicle for getting to what I am trying to get to. I would be the first to acknowledge that. But it is a hell of a lot better than what we have going right now. We don't have any standard right now. And, unless we start with some kind of standard, other than 37 different opinions, we are going to be really in a serious problem. We will be doing a lot of work and spending a lot of money and spending a lot of time without having any basic, even minimal agreement about what the standard is.

It would be nice to just talk to you about what your standard is. I heard for the first time what the majority counsel's standard is today, and I was horrified. I will be honest with you. I could not believe what the majority counsel was saying to us the standard was that we should be applying.

Mr. CANNON. Why will a discussion—why will this protracted process yield more concurrence than we have developed in the—I think the average age in here is probably 50 or 60. Who knows? Why is debating going to change that greatly?

Mr. WATT. We should just keep applying all of these different standards as we move along, not have any edification of the public or the committee members?

I hope we will have some edification for the majority counsel. If he thinks that the standards that he outlined in the first three pages of his presentation today are the standards that I am going to apply, then I think the first thing we need to do is educate our counsel.

And I would love to have somebody come in here who knows something about the precedents and history and talk about the Founding Fathers and what they intended. Isn't that what we are

supposed to be proceeding on? Or are we just proceeding on 37 different conceptions of what we think impeachment is?

Mr. CANNON. If the gentleman will yield, there are going to be 37 votes in this committee.

Mr. WATT. Sure. And we won't ever get to any conclusion about it until we have wasted taxpayer money, wasted endless hours of time. And we will get out there, and maybe we will have a consensus about it, which, if we talked about it at the beginning, could have developed from the very beginning and saved ourselves and the taxpayers a lot of money and time.

Mr. HYDE. The question now occurs on the Berman amendment.
The Clerk will call the role.
The CLERK. Mr. Sensenbrenner.
Mr. SENSENBRENNER. No.
The CLERK. Mr. Sensenbrenner votes no.
Mr. McCollum.
Mr. MCCOLLUM. No.
The CLERK. Mr. McCollum votes no.
Mr. Gekas.
Mr. GEKAS. No.
The CLERK. Mr. Gekas votes no.
Mr. Coble.
Mr. COBLE. No.
The CLERK. Mr. Coble votes no.
Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Smith votes no.
Mr. Gallegly.
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly votes no.
Mr. Canady.
Mr. CANADY. No.
The CLERK. Mr. Canady votes no.
Mr. Inglis.
Mr. INGLIS. No.
The CLERK. Mr. Inglis votes no.
Mr. Goodlatte.
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte votes no.
Mr. Buyer.
Mr. BUYER. No.
The CLERK. Mr. Buyer votes no.
Mr. Bryant.
Mr. BRYANT. No.
The CLERK. Mr. Bryant votes no.
Mr. Chabot.
Mr. CHABOT. No.
The CLERK. Mr. Chabot votes no.
Mr. Barr.
Mr. BARR. No.
The CLERK. Mr. Barr votes no.
Mr. Jenkins.
Mr. JENKINS. No.
The CLERK. Mr. Jenkins votes no.

Mr. Hutchinson.
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson votes no.
Mr. Pease.
Mr. PEASE. No.
The CLERK. Mr. Pease votes no.
Mr. Cannon.
Mr. CANNON. No.
The CLERK. Mr. Cannon votes no.
Mr. Rogan.
Mr. ROGAN. No.
The CLERK. Mr. Rogan votes no.
Mr. Graham.
Mr. GRAHAM. No.
The CLERK. Mr. Graham votes no.
Mrs. Bono.
Mrs. BONO. No.
The CLERK. Mrs. Bono votes no.
Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers votes aye.
Mr. Frank.
Mr. FRANK. Aye.
The CLERK. Mr. Frank votes aye.
Mr. Schumer.
Mr. SCHUMER. Aye.
The CLERK. Mr. Schumer votes aye.
Mr. Berman.
Mr. BERMAN. Aye.
The CLERK. Mr. Berman votes aye.
Mr. Boucher.
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher votes aye.
Mr. Nadler.
Mr. NADLER. Aye.
The CLERK. Mr. Nadler votes aye.
Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott votes aye.
Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt votes aye.
Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren votes aye.
Ms. Jackson Lee.
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee votes aye.
Ms. Waters.
Ms. WATERS. Aye.
The CLERK. Ms. Waters votes aye.
Mr. Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan votes aye.

Mr. Delahunt.
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt votes aye.
Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler votes aye.
Mr. Rothman.
Mr. ROTHMAN. Aye.
The CLERK. Mr. Rothman votes aye.
Mr. Barrett.
Mr. BARRETT. Aye.
The CLERK. Mr. Barrett votes aye.
Mr. Hyde.
Mr. HYDE. No.
The CLERK. Mr. Hyde votes no.
Mr. COBLE. Mr. Chairman, how am I recorded?
The CLERK. Mr. Coble votes no.
Mr. HYDE. The Clerk will report.
The CLERK. Mr. Chairman, there are 16 ayes and 21 noes.
Mr. HYDE. The amendment is not agreed to.
The Chair has been in consultation with the ranking member, and we expect votes imminently. Does anybody know down here?
Mr. CONYERS. The answer is yes.
Mr. HYDE. In any event, we anticipate a couple of votes. The Democrats would like to caucus and——
Mr. CONYERS. Would the chairman yield so that I could announce to my colleagues on this side that we will meet, if there is going to be a brief recess or whatever time before the vote, if we could repair to 2142 for just a few moments, if it is the Chair's intention.
Mr. HYDE. Sure.
Mr. NADLER. Mr. Chairman.
Mr. HYDE. Ms. Jackson Lee wishes to be recognized.
Ms. JACKSON LEE. I am sorry if I make an inquiry. I did not hear what the ranking member said. Are we recessing now?
Mr. CONYERS. The Chair is going to stop now, anticipating the votes, and we will be meeting in caucus in the library immediately after such recess.
Ms. JACKSON LEE. Does that mean that we are going to come back again this evening?
Mr. CONYERS. It means exactly that.
Ms. JACKSON LEE. All right.
Mr. HYDE. We fully expect to finish this evening. We will move in that direction, but you folks would like time for a caucus. There are going to be a couple votes. Let us take a recess until immediately after the votes and when you return from your caucus.
The committee will stand at ease until we come back.
[Recess.]
Mr. HYDE. The committee will come to order.
The gentlewoman from Texas is recognized for 5 minutes to strike the last word.
Ms. JACKSON LEE. Mr. Chairman, I thank the gentleman very much.

We have come a long way this day. Many of us may disagree with how far and where we have gone and where we are going.

Mr. Chairman, with the consideration of time, I had an amendment that I would like to briefly speak about, but I am not going to offer it.

I raise it because I am puzzled and I have a sense of unreadiness. I know we are about to vote on a resolution, now that amendments that I would have been able to accept, that would have given us constitutional parameters, have not been adopted.

I had intended to offer an amendment, because of the nature of the present amendment, to have us finish our work, in response I believe to the heightened sensitivity of Americans, a concern of what this will do to our Nation, the responsibility that we have in the international arena, that we would finish this work by December 10, 1998.

This goes beyond my good friend's amendment that was offered earlier in the day, and it certainly goes beyond, to a certain extent, Mr. Berman, because Mr. Berman was, I think, astute enough to narrow the referral, narrow the investigation to deem the facts as true as those in the referral.

I ask my colleagues on the Republican side, why can't we limit the time? Why can't we, in a bipartisan way, limit the time inasmuch as the resolution that we are voting on today is not ending, and with no focus?

It means, as I understand the resolution presented, Mr. Hyde, that we can now investigate and draw in any and everything, even though we have all acknowledged that this investigation has been going on for almost 5 years, even under Mr. Ken Starr's predecessor, and we have brought nothing forward on Whitewater, we have brought nothing forward on Travelgate, on Filegate.

We have a referral on Ms. Lewinsky, and yet what we vote on today, what I understand you present to the House on October 9th, will be this kind of expansion, fishing-type resolution. Adding insult to injury is that we find out, in fact, that the resolution has no end time.

Mr. Chairman, I do respect what you have offered, and I understand you said that you will be sensitive about time constraints. I don't want to cover up anything, and my colleagues don't want to cover up anything, but we have not established the constitutional parameters, even on these allegations of Ms. Lewinsky. Yet, now we are looking to expand this by this vote today.

I am a little concerned, and I thought maybe if I offered the thought, that I could draw collaborative and bipartisan support for us voluntarily limiting ourselves to a certain time to end the pain, the divisiveness and, as well, allow this Nation to go on with its business.

Might I just say this, Mr. Chairman. We have cited Watergate in so many different ways. We have even harnessed ourselves to Watergate, as Watergate has allowed us support for arguments, and then it has certainly posed opposition to arguments.

But one point I think ran true through many of the themes of the Federalist Papers and, as well, constitutional scholars: The purpose of impeachment is not personal punishment, as cited by

the Watergate staff in February, 1974; its function is primarily to maintain a constitutional government.

Frankly, I believe that we are treading on very difficult ground here by moving forward with this resolution that now is open-ended. We have not established the constitutional basis of impeachable offenses. You are now suggesting that we start anew—and I am not sure what this resolution will suggest—start anew the issues of Whitewater, start anew the issues of Travelgate, start anew the issues of Filegate.

Frankly, Mr. Chairman, Mr. Starr has not presented anything to suggest that he has any further information on these alleged incidences that have been under investigation for so long.

Can we, in the spirit of harmony, in the spirit of collaboration, concede to a time certain, December 10, 1998, which will give us time to either determine whether there are areas of impeachment, to determine whether there are alternatives and, likewise, have enough time in this Congress for this Senate to receive whatever we might so choose to present; or, in the alternative, to determine realistically that we have not reached the level of these incidences becoming impeachable offenses?

December 10th gets us before the holiday. It is after the Thanksgiving holiday. We have committed to coming back here after the election. I know many of us are committed to doing so if you call us, Mr. Chairman. I am just stunned that, although we have had the tone of bipartisanship, the minority has not been able to gain the goodwill and good faith of this majority to, in fact, draw us together around some issues of commonality.

Let me, as well, say what has been said on occasions, as I close, Mr. Chairman. The President is not above or beneath the law.

I would just hope that we would be able to do that.

Mr. HYDE. The gentlewoman's time has expired.

Ms. JACKSON LEE. Mr. Chairman, I would ask an additional minute so I could yield to you and ask a question about the time element.

Mr. HYDE. The gentlewoman is recognized for 1 additional minute.

Ms. JACKSON LEE. Mr. Chairman, can we come to an agreement on working towards a reasonable time certain, not to cover up, not to deny my colleagues on the other side of the aisle their fair assessment of the facts, but recognizing where we are, Mr. Chairman, in this process?

Mr. HYDE. I would say to the gentlewoman that we are opposed to arbitrary time lines, as was Peter Rodino in the Nixon impeachment. We find that is an invitation to delay. We are going to move as swiftly as human hands and feet and minds can do it, because nobody wants this to be attenuated and stretched out. But arbitrary time limits put more stresses and strains on trying to get the job done. They don't help us.

I would just ask you to accept the fact that we want to move this thing along. I have announced my New Year's resolution, to have it over by then. But I can't tell how cooperative people will be that we find necessary to depose or have testify. There is a record of footdragging here, and I am not talking about this committee.

But we will not just generally impose artificial time limits. We are following the Rodino format, which you asked us to do. He had resisted artificial time lines. Senator Thompson said the greatest mistake he ever made in his investigation was acceding to time lines. So we have gone to school on that.

We decided that we will do our best to accelerate this, but we don't wish to succumb to artificial time lines.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

I would reclaim my time for a last word. I was hoping that we could, not in the spirit of delay or to give witnesses the opportunity to delay, but for people to realize that we are now voting for an open-ended, unending, with no cessation of time, to keep this going.

I just hope we will come to our senses, Mr. Chairman, as we move forward.

Mr. HYDE. I thank the gentlewoman.

Mr. HYDE. The question occurs on the resolution. The Clerk will call the roll.

The CLERK. Mr. Sensenbrenner.
Mr. SENSENBRENNER. Aye.
The CLERK. Mr. Sensenbrenner votes aye.
Mr. McCollum.
Mr. MCCOLLUM. Aye.
The CLERK. Mr. McCollum votes aye.
Mr. Gekas.
Mr. GEKAS. Aye.
The CLERK. Mr. Gekas votes aye.
Mr. Coble.
Mr. COBLE. Aye.
The CLERK. Mr. Coble votes aye.
Mr. Smith.
Mr. SMITH. Aye.
The CLERK. Mr. Smith votes aye.
Mr. Gallegly.
Mr. GALLEGLY. Aye.
The CLERK. Mr. Gallegly votes aye.
Mr. Canady.
Mr. CANADY. Aye.
The CLERK. Mr. Canady votes aye.
Mr. Inglis.
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis votes aye.
Mr. Goodlatte.
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte votes aye.
Mr. Buyer.
Mr. BUYER. Aye.
The CLERK. Mr. Buyer votes aye.
Mr. Bryant.
Mr. BRYANT. Aye.
The CLERK. Mr. Bryant votes aye.
Mr. Chabot.
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot votes aye.
Mr. Barr.

Mr. BARR. Aye.
The CLERK. Mr. Barr votes aye.
Mr. Jenkins.
Mr. JENKINS. Aye
The CLERK. Mr. Jenkins votes aye.
Mr. Hutchinson.
Mr. HUTCHINSON. Aye.
The CLERK. Mr. Hutchinson votes aye.
Mr. Pease.
Mr. PEASE. Aye.
The CLERK. Mr. Pease votes aye.
Mr. Cannon.
Mr. CANNON. Aye.
The CLERK. Mr. Cannon votes aye.
Mr. Rogan.
Mr. ROGAN. Aye.
The CLERK. Mr. Rogan votes aye.
Mr. Graham.
Mr. GRAHAM. Aye.
The CLERK. Mr. Graham votes aye.
Mrs. Bono.
Mrs. BONO. Aye.
The CLERK. Mrs. Bono votes aye.
Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Conyers votes no.
Mr. Frank.
Mr. FRANK. No.
The CLERK. Mr. Frank votes no.
Mr. Schumer.
Mr. SCHUMER. No.
The CLERK. Mr. Schumer votes no.
Mr. Berman.
Mr. BERMAN. No.
The CLERK. Mr. Berman votes no.
Mr. Boucher.
Mr. BOUCHER. No.
The CLERK. Mr. Boucher votes no.
Mr. Nadler.
Mr. NADLER. No.
The CLERK. Mr. Nadler votes no.
Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott votes no.
Mr. Watt.
Mr. WATT. No.
The CLERK. Mr. Watt votes no.
Ms. Lofgren.
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren votes no.
Ms. Jackson Lee.
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee votes no.
Ms. Waters.

Ms. WATERS. No.
The CLERK. Ms. Waters votes no.
Mr. Meehan.
Mr. MEEHAN. No.
The CLERK. Mr. Meehan votes no.
Mr. Delahunt.
Mr. DELAHUNT. No.
The CLERK. Mr. Delahunt votes no.
Mr. Wexler.
Mr. WEXLER. No.
The CLERK. Mr. Wexler votes no.
Mr. Rothman.
Mr. ROTHMAN. No.
The CLERK. Mr. Rothman votes no.
Mr. Hyde.
Mr. HYDE. Aye.
The CLERK. Mr. Hyde votes aye.
Mr. Chairman, there are 21 ayes and 16 noes.
Mr. HYDE. The resolution is ordered reported.
Mr. Barr is recognized for a unanimous consent request.

STATEMENT OF HON. BOB BARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BARR. Mr. Chairman, I ask unanimous consent that I be allowed to insert the statement that was given earlier by majority counsel. It was a very moving statement, and I would like to adopt it as my own, in final remarks.

Mr. HYDE. Without objection, so ordered.

Mr. Chairman, may I be permitted to make a personal observation.

I am speaking no longer as a chief investigative counsel, but rather as a citizen of the United States, who happens to be father and grandfather.

To paraphrase St. Thomas More in Robert Bolt's excellent play "A Man for All Seasons," the laws of this country are the great barriers that protect the citizens from the winds of evil tyranny. If we permit one of those laws to fall, who will be able to stand in the gusts that will follow?

Members of the committee, it is not only the people in this room, or the immense television audience that are watching; 15 generations of our fellow Americans, many of whom are reposing in military cemeteries throughout the world, are looking down upon, and judging what you do today.

Mr. BARR. Mr. Chairman, I also ask unanimous consent to insert the Judicial Watch Interim Report dated September 28, 1998.

Mr. HYDE. Without objection.

[The information follows:]

JUDICIAL WATCH INTERIM REPORT ON CRIMES AND OTHER OFFENSES COMMITTED BY PRESIDENT BILL CLINTON WARRANTING HIS IMPEACHMENT AND REMOVAL FROM ELECTED OFFICE

Founded in 1994 by its Chairman and General Counsel Larry Klayman, Judicial Watch, Inc. is a non-profit, public-interest law firm dedicated to using the courts to fight corruption in government and the legal profession.

Judicial Watch Interim Report on Crimes and Other Offenses Committed by President Bill Clinton Warranting His Impeachment and Removal from Elected Office

INTRODUCTION

The President, Vice President and all civil officers of the United States, shall be removed from office on Impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

United States Constitution, Article II, Section 4

In his conduct of the office of President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, in that:

Beginning around the Fall of 1994, William Jefferson Clinton, his agents and subordinates engaged in bribery through the sale of taxpayer-financed trade mission seats in exchange for campaign contributions. Subsequent thereto, President Bill Clinton, using the powers of his high office, engaged personally and through his close agents and subordinates, in a course of conduct or plan designed to delay, impede and obstruct the investigation of such bribery; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

Throughout his terms of office, William Jefferson Clinton has repeatedly engaged, personally and through his close subordinates and agents, in conduct violating the constitutional rights of citizens, breaching the national security, impairing the due and proper administration of justice, and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposes of these agencies.

In all of this, William Jefferson Clinton has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office.[1]

Judicial Watch, Inc. respectfully submits to the United States Congress its Interim Report on Crimes and Other Offenses Committed by President Bill Clinton Warranting His Impeachment and Removal from Elected Office.

As the United States House of Representatives considers whether to launch impeachment proceedings against President William Jefferson Clinton over his conduct relating to the Paula Jones sexual harassment lawsuit and resulting criminal grand jury investigations, we ask that it also consider this additional evidence, developed over the last several years through Judicial Watch's civil lawsuits, Freedom of Information Act requests, and other investigations of government corruption.[2]

Judicial Watch has uncovered evidence that President Clinton and his agents have violated a number of federal laws relating to bribery, campaign fundraising, the theft of government services, privacy, corruption of federal law enforcement, abuse and misuse of federal agencies (including the Internal Revenue Service), perjury, civil rights violations, obstruction of justice, graft and likely breaches of national security.

The evidence uncovered by Judicial Watch overwhelmingly indicates that President Clinton condoned, directed and effected this lawbreaking. It also shows that he was aided and abetted by, among others, Hillary Rodham Clinton, Vice President Albert Gore, late Commerce Secretary Ronald Brown, Attorney General Janet Reno, and other key White House personnel, including Leon Panetta, John Podesta, Harold Ickes, Bruce Lindsey, Bernard Nussbaum, and Labor Secretary Alexis Herman.

For example, Judicial Watch has uncovered key evidence in the massive political espionage, witness tampering and intimidation operation popularly known as "Filegate." In "Filegate," the Clinton White House, the Federal Bureau of Investigation ("FBI"), Hillary Rodham Clinton, former White House Counsel Bernard Nussbaum, and Clinton appointees Craig Livingstone and Anthony Marceca, illegally obtained and misused the FBI files of former Reagan and Bush Administration staffers and others to gain sensitive information on perceived political opponents and material witnesses for use in its smear campaigns. Judicial Watch represents the victims of "Filegate" in a civil lawsuit.

The "Filegate" political espionage, witness tampering and intimidation operation, a horrendous violation of the Privacy Act and other laws, continues to this day. It represents the means by which the Clintons defend the various scandals which threaten their hold on power. The evidence indicates that the Clinton Administration, with the direct knowledge and participation of the President, continues to illegally compile, maintain and disseminate sensitive information on perceived adversaries from confidential government files. Contrary to previous Clinton Administration explanations, Judicial Watch discovered that it was a high-level Clinton political appointee who illegally ordered the release of Linda Tripp's confidential information from her Pentagon file in a clear effort to intimidate her from telling what she knew of Clinton White House illegal activities, and to destroy her credibility. Judi-

cial Watch also uncovered evidence indicating that President Clinton authorized the illegal release of Kathleen Willey's letters, stored in a White House filing system subject to the Privacy Act, in an effort to intimidate and smear her. Like Ms. Tripp, Ms. Willey is a material witness in on-going criminal grand jury investigations and civil lawsuits.

Part of the pattern of "Filegate" is President Clinton's use of private investigators, the Reno Justice Department, the FBI, the IRS, and political operatives such as James Carville to obstruct justice, silence witnesses and intimidate investigators. For example, Judicial Watch has uncovered evidence that President Clinton personally participated in this operation by threatening "to destroy," and then defaming one witness, Dolly Kyle Browning, if she dared to tell the truth about their 30-year friendship and sexual relationship.

President Clinton's political appointee and former IRS Commissioner Margaret Milner Richardson also illegally used the IRS to audit public interest groups thought to be hostile to the Clinton Administration, including the Western Journalism Center.

Through discovery in its civil lawsuit against the Clinton Commerce Department, Judicial Watch also has found evidence that President Clinton condoned and participated in a scheme, conceived by First Lady Hillary Rodham Clinton and approved by the President, to sell seats on U.S. Department of Commerce trade missions in exchange for political contributions. Bribery is specifically highlighted in the U.S. Constitution as an offense warranting impeachment.

In President Clinton's push to sell taxpayer-financed government services to raise money for his political operations, national security likely was breached by his Commerce Department appointees and those involved in his fundraising scheme, such as John Huang. While Judicial Watch is at an interim stage of investigation in this sensitive area, the breaches of national security uncovered at the Clinton Commerce Department raise real questions of treasonous activities by the President and members of his Administration.

To cover-up this illegal fundraising and likely national security breaches, President Clinton's top two staffers, then-Chief of Staff Leon Panetta and Deputy Chief of Staff John Podesta, ordered late Commerce Secretary Ron Brown to obstruct justice and defy federal Court orders. The evidence also indicates that Secretary Brown personally consulted with President Clinton in furtherance of this cover-up.

In addition to the illegal sale of taxpayer-financed services, such as seats on government trade missions, for political contributions, the President and Mrs. Clinton have illegally solicited and received monies directly from private citizens and others. The creation and use of legal defense funds is not only prohibited under federal law, but they have proved to be a means whereby lobbyists, influence peddlers and foreign powers have tried to influence the Administration, contrary to U.S. national security interests.

This President's Administration has also misused government lawyers to obstruct investigations into his wrongdoing. His Commerce Department lawyers obstructed Court-ordered discovery into the illegal sale of taxpayer-financed trade mission seats for political contributions. His Justice Department lawyers threatened investigators with criminal prosecution, timed the indictment of a major whistle-blower witness to try to force her into silence, and consistently obstructed Court processes to cover-up Clinton-appointee wrongdoing, perjury and destruction of evidence.

In sum, Judicial Watch has uncovered a pattern of conduct by this President and his agents that indicates he has run, in effect, a criminal enterprise from the White House to obtain and maintain hold on the Office of the President of the United States. Indeed, he is likely in violation of the Racketeering Influenced and Corrupt Organizations Act (RICO), a charge recently filed against him by Dolly Kyle Browning in federal court.[3] This pervasive corruption, flowing from the Oval Office, is the common thread throughout the various "high crimes and misdemeanors" outlined in this interim report.

PART I

FILEGATE

Crimes and Other Offenses Relating to the Misuse of FBI and other Government Files that Warrant Impeachment and Removal from Office of President Bill Clinton

I. Introduction.

Judicial Watch has been investigating the misuse of information in government files since September 1996, when it filed a class-action lawsuit on behalf of eight (8) former Reagan and Bush Administration appointees and employees whose FBI

background investigation files were improperly obtained by the Clinton White House. That lawsuit is pending before The Honorable Royce C. Lamberth of the U.S. District Court for the District of Columbia.(4)

In the course of its investigation, Judicial Watch has uncovered substantial evidence of unlawful misuses of information in government files, abuses of power and violations of the Privacy Act. The substantial evidence uncovered by Judicial Watch's investigation links key presidential advisors such as James Carville, Harold Ickes, Lanny Davis, Kenneth Bacon and even the President himself, to this unlawful conduct. The obvious purpose behind the unlawful misuse of this information is to discredit, if not destroy, perceived adversaries and critics of the President.

Importantly, the evidence uncovered during the course of Judicial Watch's investigation, which still continues, goes beyond acquisition of the over 900 FBI background investigation files on former Reagan and Bush Administration appointees and employees. It also includes evidence of misuse of information in government files, and attempts to discredit or destroy the credibility of key witnesses in Independent Counsel Kenneth W. Starr's investigation of the Monica Lewinsky matter, including Ms. Linda R. Tripp and Ms. Kathleen Willey, if not Judge Starr himself. It also includes attempts to discredit and destroy congressional adversaries and other perceived opponents. At times, information in government files is released directly to the media by Clinton Administration officials. Other times, information is leaked to members of the media, such as *The New Yorker* magazine's Jane Mayer, *Salon Magazine* and Geraldo Rivera, so that it can be disseminated to the public without it being associated directly with, or coming from, the Clinton Administration.

Most recently, this tactic of attempting to discredit and destroy the credibility of perceived adversaries has manifested itself in revelations about the personal lives of Speaker Newt Gingrich, House Judiciary Chairman Henry Hyde, and Representatives Dan Burton and Helen Chenoweth, coupled with threats broadcast by Roger Clinton and published in *Salon Magazine* and other publications and news outlets. For example, in what can only be described as a thinly-veiled threat against perceived adversaries and other critics of the President, *Salon Magazine* has "reported" that:

[D]ie-hard Clinton loyalists are spreading the word that a long-ignored but fearsome tactic has now resurfaced as an element in the president's survival strategy: The threat of exposing the sexual improprieties of Republican critics, both in Congress and beyond, should they demand impeachment hearings in the House.(5)

Jonathon Broder, the editor of *Salon* "reports" "one close ally of the president" as saying that "[t]he Republicans with skeletons in their closets must assume everything is known and will come out. So the question is: Do they really want to go there?"(6) "Sources in the Clinton camp say they are focusing their attention not only on issues of marital infidelity but also on issues of character," according to Mr. Broder.(7) Mr. Broder "reports" that his "sources" say "among those under scrutiny" are House Speaker Newt Gingrich, House Majority Leader Richard Armey, Chairman Dan Burton of the House Government Reform and Oversight Committee and Chairman Henry Hyde of the House Judiciary Committee.(8)

Salon is not alone in reporting details of Clinton's sexual scorched-earth plan. *Insight Magazine* reports that:

> [It] has learned from a variety of sources—lawmakers and Hill staffers, journalists and dirt-diggers themselves—of several active gumshoe probes into GOP figures, including a governor suspected of a series of office romances and a House member. An entrapment bid was launched recently on a prominent Republican senator, claim private investigators. It failed.(9)

As further revealed by *Insight,* one Democratic member of Congress, who had the courage to call for President Clinton's resignation, was subsequently hit by the Clinton "smear machine:"

Clinton aides also demonstrated their readiness to play dirty in the last week of August when they "reminded" TV talk-show hosts of the highly dubious "controversy" surrounding Pennsylvania Democratic Representative Paul McHale's military record. The White House prompt—McHale was said to have misrepresented what medals he'd been awarded—was apparent punishment for the Pennsylvanian calling on the president to resign. It was so clearly dishonest that even Geraldo Rivera apologized for picking it up from a source close to the White House.(10)

Representatives Burton and Gingrich were hit about a month after *Salon's* "scorched-earth" article. Faced with imminent publication of details about his family life, Chairman Dan Burton, who is conducting campaign finance investigations of President Clinton, recently was forced to admit, in the face of an imminent smear campaign against him, that in the early 1980s he fathered a child out of wedlock

and provided continuing child support payments to the mother.[11] *Salon* itself recently committed an act of self-fulfilling prophecy by publishing articles detailing allegations about the sex lives of House Speaker Newt Gingrich[12] and House Judiciary Chairman Henry Hyde.[13]

Thus, as more revelations about the Lewinsky matter become public and the President comes under increasing threat of impeachment and possible indictment, the White House and its allies are increasingly resorting to scorched-earth tactics to avoid impeachment or resignation. Indeed, given the Clintons' proclivities for controversy, if not scandal, it is likely that they ordered the gathering of FBI files and other information early on in their Administration for later use—whenever it became necessary.

II. Applicability of the Privacy Act.

Judicial Watch's "Filegate" lawsuit is premised on common law invasion of privacy claims and the Privacy Act, a federal law enacted in 1974 as a result of misuse of information in government files and other abuses of power during the Nixon Administration.

The protections afforded by the Privacy Act take effect whenever a federal agency maintains a "system of records" containing information on individuals "from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual." 5 U.S.C. §552a(a)(5). Importantly, agencies must "maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President." 5 U.S.C. §552a(e)(1). They also must maintain only information that is accurate, timely and complete. 5 U.S.C. §552a(e)(5). Agencies are specifically prohibited from maintaining records that describe "how any individual exercises rights guaranteed by the First Amendment, unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity."[14] 5 U.S.C. §552a(e)(7).

Each agency maintaining records on individuals must publish, at least annually in the Federal Register, notice of the existence of each system of records it maintains. By law, this notice must also include information about the system, including its name and location of the system, categories of individuals on whom records are maintained in the system, categories of documents maintained in the system, each routine use of records contained in the system, policies and practices regarding storage, retrievability, access controls, retention and disposal, the title and business address of the official who is responsible for the system of records, procedures whereby an individual can be notified at his request if the system contains a record pertaining to him, procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system and how he can contest its contents, and categories of sources of records in the system. 5 U.S.C. §552a(e)(4).

There is to be no disclosure of any record about individuals maintained in a system of records "except pursuant to a written request by, or with the prior written consent of," the subject. 5 U.S.C. §552a(b). Importantly, a disclosure need not be public to be unlawful; an "intra-agency" disclosure may also violate the Privacy Act where the disclosure is made to officers or employees who have no need for the record in the performance of their official duties. *Parks v. Internal Revenue Service,* 618 F.2d 677 680–81 & n.1 (10th Cir. 1980); 5 U.S.C. §552a(b)(1).

There are limited exceptions to this general rule of non-disclosure, the most important of which is the "routine use" exception. 5 U.S.C. §552a(a)(7). Each type of "routine use" must, however, be published at least annually in the Federal Register. 5 U.S.C. §552a(e)(4)(D). Agencies are required to keep an accounting of disclosures. 5 U.S.C. §552a(c).

Finally, the Privacy Act provides for civil and criminal sanctions. Any officer or employee who willfully discloses subject material in any manner to a person or agency not entitled to receive it, shall be guilty of a crime and fined not more than $5,000. 5 U.S.C. §552a(i)(1). Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) also shall be guilty of a crime and fined not more than $5,000. 5 U.S.C. §552a(i)(2).

FBI background investigation files, such as those at issue in "Filegate," are admittedly maintained in a system of records by the FBI. Consequently, it cannot be questioned that they are covered by the Privacy Act. In fact, the FBI admitted as much in Judicial Watch's lawsuit. In response to the lawsuit, however, the Clinton White House claimed that the Privacy Act did not apply to it. In a Memorandum and Order dated June 12, 1997, the Court rejected this claim and confirmed that

the Privacy Act did, in fact, apply to the White House.[15] However, the Privacy Act also makes clear that any time a federal official maintains records on individuals that can be accessed by reference to an individual's name, the protections of the Privacy Act come into play. It does not matter what information is stored in the file. To release anything from a covered file—even a press clipping—violates the Privacy Act.[16]

III. Factual Background.

The origins of the Clinton White House's misuse of information in government files predate 1993. Former presidential advisor Dick Morris admitted that the 1992 Clinton campaign used private investigators, at U.S. taxpayers' expense, to obtain private and embarrassing information to coerce and extort the silence of women sexually involved with President Clinton while he was Governor of Arkansas. The effort was run by Betsy Wright, who, at crucial and relevant times, Secret Service logs show later visited Craig Livingstone, one of the key players in "Filegate," at odd hours in the White House.[7]

Unknown to the public, in 1993 the Clinton White House obtained the FBI files of Billy Dale, the former head of the White House Travel Office, and Barney Brasseux, a White House Travel Office employee.[18] Apparently, these FBI files were obtained by the Clinton White House shortly after Mr. Dale, a twenty-year veteran of the White House Travel Office, Mr. Brasseux, and several other employees of the White House Travel Office were fired by the Clinton White House to allow their replacement with personal friends of the President and Hillary Rodham Clinton. Mr. Dale was subsequently indicted on trumped-up charges of fraud. Later, Mr. Dale was completely exonerated of any wrong-doing. He even received an award of attorneys' fees for having to defend himself against the baseless charges brought against him. It is likely that the reason for indicting Mr. Dale was to avoid the appearance that he was fired simply to allow the Clintons to bring their personal friends into the White House Travel Office. It is also likely that the reason Mr. Dale's and Mr. Brasseux's FBI files were obtained was to try to find damaging information about them to avoid the appearance of political cronyism in firing them.

About this same time, numerous press reports were circulating about illegal drug use and improper sexual conduct among White House staffers. Apparently to counter these and possibly other charges, or to retaliate against Reagan and Bush Administration appointees and employees for the release of information about President Clinton's passport during the 1992 election, the Clinton White House also obtained over 900 FBI background investigation files on former Reagan and Bush Administration appointees and employees. Surely, this information could also be very useful to discredit and destroy perceived adversaries, or simply to intimidate them. Among the FBI files unlawfully obtained by the Clinton White House were those of some prominent individuals, such as former Bush Secretary of State James A. Baker (who, not coincidentally, had been involved in the Clinton passport controversy), former Bush Press Secretary Marlin Fitzwater,[19] Kenneth Duberstein and Tony Blankley, a former aide to Speaker Newt Gingrich.[20] The FBI file of Ms. Linda R. Tripp, a Bush Administration "hold-over" who was apparently perceived to be a potential threat at that time, was also obtained. Ms. Tripp would later be transferred to the Department of Defense and suffer yet another violation of her Privacy Act rights.

The evidence shows that the Clinton White House knowingly requested the FBI files of Republicans "who were no longer working there."[21] Mari Anderson, Craig Livingstone's assistant, testified to Judicial Watch that she, Livingstone and Anthony Marceca were aware that Republicans, such as James Baker and Marlin Fitzwater, no longer had access to the White House, but that their FBI files were obtained anyway.[22] Anderson also testified that Livingstone regularly left their office with FBI files in tow.[23] A log, which was to have chronicled any removal of the FBI files to other areas in the White House, mysteriously developed a six-month gap, reminiscent of the eighteen-minute gap in Richard Nixon's oval office tapes.[24]

While working for Clinton White House Counsel Bernard Nussbaum, whose name appears on the requisition forms for the FBI files, Ms. Tripp was in a bird's-eye view position to witness the unlawful conduct that would later become known as "Filegate." In discussions with Judicial Watch, Ms. Tripp admitted to having witnessed FBI files on former Reagan and Bush Administration appointees and employees "stacked up to the ceiling" in Assistant White House Counsel William Kennedy's office.[25] As reported by Ms. Lucianne Goldberg, Ms. Tripp's literary agent and friend, Ms. Tripp also "witnessed a White House secretary loading up FBI files on a computer" in the White House Counsel's Office.[26] Ms. Tripp also told Tony Snow, a nationally-syndicated columnist for *The Detroit News* and commentator for the Fox News Channel, that:

> [S]he was shaken by White House dishonesty during investigations of Vince Foster's death, *Filegate, Travelgate,* and reports of drug abuse among administration employees. "It's chilling," she says, "to watch high government officials lie under oath.(27)

(Emphasis added). Finally, Ms. Tripp reportedly saw a document evidencing Mrs. Clinton's direct involvement in the firings at the White House Travel Office.(28)

In the course of Ms. Paula Corbin Jones' sexual harassment lawsuit, President Clinton, through his lawyers, David Kendall, Esq. of Williams & Connolly and Robert Bennett, Esq. of Skadden, Arps, Slate, Meagher & Flom, hired Terry Lenzoer's private investigation firm, Investigative Group International, Inc. ("IGI"), apparently to obtain information for use in that lawsuit and elsewhere.(29) Lenzner and IGI were later retained to provide similar services for other matters involving the President, including the Lewinsky matter. When Judicial Watch deposed Lenzner on March 13, 1998, he revealed that Larry Potts, a disgraced senior FBI official who allegedly gave the "shoot on sight" orders at the Ruby Ridge massacre, is "virtually a partner" of his in running IGI.(30) In addition, Lenzner testified that Howard Shapiro, Esq., the former General Counsel of the FBI who also left the Bureau in disgrace because of the "Filegate" matter, serves as IGI's principal attorney.(31) Indeed, Lenzner, a former Department of Justice lawyer, has worked closely with the FBI. Thus, Lenzner, Potts and Shapiro all had close ties to FBI personnel and were in a position to solicit information from inside the FBI. Significantly, on March 3, 1998, FBI Director Louis Freeh issued a warning to all FBI personnel against providing information to FBI alumni and others about the various investigations involving the President.(32) Obviously, Director Freeh must have been concerned that information in FBI files had been and was being leaked to individuals with close ties to the FBI such as Lenzner, Potts and Shapiro.

At his deposition, Lenzner confirmed that he had investigated perceived Clinton adversaries, including members of the media, public interest groups and even members of the judiciary.(33) However, he selectively invoked the "work product" doctrine to avoid having to answer specific questions about who IGI had investigated.(34) Hiding behind the "skirts" of David Kendall and Robert Bennett, Lenzner asserted the "work product" doctrine in response to some questions, but tellingly failed to do so in response to others. For example, Lenzner testified that he had not been asked or retained to investigate Kathleen Willey, but refused to state whether he had been retained to investigate Linda Tripp:

> Plaintiffs' Counsel: Have you been approached or retained to investigate . . . Kathleen Willey?
> Lenzner: No.
> Plaintiffs' Counsel: Linda Tripp?
> Lenzner's Counsel: Same privileged objections. Same instruction.
> Lenzner: I will accept my instruction on that.(35)

The clear implication behind this selective invocation of the work-product doctrine, however disingenuous those invocations are, was that Lenzner, in fact, has been investigating these perceived adversaries of the President. A report in the *San Francisco Examiner* directly linked Lenzner to the recent dissemination of private information smearing House Judiciary Committee Chairman Henry Hyde.(36) Rather than let his private investigators, Lenzner and Potts, answer questions in Judicial Watch's "Filegate" lawsuit, incredibly, the President has sought to intervene personally to prevent this questioning.(37)

When the most recent Clinton scandal involving Ms. Lewinsky broke in late January 1998, the Clinton White House again reverted to releasing information in government files—and threatening further releases—in order to silence and discredit its perceived adversaries. During a February 8, 1998 interview, George Stephanopoulos, a former top adviser to and continuing confidante of President Clinton, and other top advisors in the White House, told a national television audience on ABC's *This Week with Sam Donaldson and Cokie Roberts* that there is an "Ellen Rometsch" strategy by "White House allies" to attack perceived adversaries of the Clinton Administration:

> Sam Donaldson: We know what the White House tactics are. I mean, they've been almost open about it. Attack the press—and perhaps with good reason—attack the [I]ndependent [C]ounsel—perhaps for some good reason—and stonewall on the central issue, which is the President of the United States. And if he has nothing to hide, why is he hiding?
>
> George Stephanopoulos: I agree with that. And there's a different, long-term strategy, which I think would be far more explosive. White House allies are already starting to whisper about what I'll call the Ellen Roemech

(sic) strategy. . . . She was a girlfriend of John F. Kennedy, who also happened to be an East German spy. And Robert Kennedy was charged with getting her out of the country and also getting John Edgar Hoover to go to the Congress and say, don't you investigate this, because if you do, we're going to open up everybody's closets. And I think that in the long run, they have a deterrent strategy on getting a lot of . . . [FBI files].

Sam Donaldson: Are you suggesting for a moment that what they're beginning to say is that if you investigate this too much, we'll put all your dirty linen right on the table? Every member of the Senate? Every member of the press corp?

George Stephanopoulos: Absolutely. The President said he would never resign, and I think some around him are willing to take everybody down with him.(38)

Historically, the "Ellen Rometsch" strategy refers to the late FBI Director J. Edgar Hoover's and Attorney General Robert F. Kennedy's successful efforts to collect and use FBI files to blackmail Republican members of Congress to prevent an investigation into President John F. Kennedy's affair with an East German spy, Ellen Rometsch.(39) Judicial Watch deposed Stephanopoulos to learn the identities of the "White House allies" about which he spoke on ABC's *This Week*.(40) However, Stephanopoulos asserted his privilege as a "journalist" not to reveal confidential sources.(41) Judicial Watch recently filed a motion with the Court to try again to compel Stephanopoulos to release this information.

Pursuant to this "Ellen Rometsch" strategy, the Clinton Administration apparently orchestrated the release of confidential information from Ms. Tripp's Department of Defense ("DOD") personnel file. On March 23, 1998, *The New Yorker* magazine published an article by Jane Mayer stating that Ms. Tripp had failed to disclose information about a twenty-year old arrest on a security clearance form.(42) As such, forms are themselves confidential, Privacy Act records. Questions thus arose concerning how Ms. Mayer had obtained this information. In a March 17, 1998 article entitled "Bill's Secret Police," Dick Morris questioned the release of this information and the implications it had for the Clinton Administration's claim that "Filegate" was an innocent bureaucratic mistake:

> [N]o journalist questioned how Tripp's confidential file ended up in *The New Yorker*. Instead, all the papers dutifully reported on her arrest and her lack of candor in disclosing it. . . . The White House secret police have struck again. Desperate to discredit Linda Tripp, President Clinton's most damning accuser, the president's men are most likely the ones who delved into confidential Pentagon files to dig up and dish out dirt on Tripp. . . . *The release of the Tripp file lends a new credibility to the Republican allegations that the White House's possession of confidential FBI files on GOP leaders and potential adversaries was no "mistakes" as the president's men piously claimed. Is Linda Tripp the latest victim of a file dump?*(43)(Emphasis added.)

Accordingly, Judicial Watch began an inquiry into the circumstances behind the release of this information, as it was obviously relevant to its "Filegate" investigation.

On April 30, 1998, Judicial Watch deposed Clifford Bernath. Bernath, Principal Deputy Assistant to the Secretary of Defense for Public Affairs, had been publicly portrayed by the Clinton Administration as the "career" Department of Defense official responsible for having released the confidential information in Ms. Tripp's personnel file to reporter Jane Mayer. The Clinton Administration also portrayed Bernath as having acted alone. At his deposition, however, Bernath testified that he was directed to obtain and release the information by his superior, Kenneth Bacon, Assistant Secretary of Defense for Public Affairs, a Clinton political appointee.(44) Bernath testified he told Mayer that Bacon "has made it clear it's [the release of the Tripp information] a priority,"(45) because Mayer "was on deadline and whenever a reporter is on deadline, we call that a priority."(46) As the Court later noted, Bernath's revelation that he was told to release the Tripp information by a Clinton political appointee was understood by the Court as conflicting with the Clinton Justice Department's statements to the Court that the release was made by a career official.(47)

Judicial Watch then deposed Bacon on May 15, 1998. Bacon testified that Mayer initially contacted him about obtaining the information from Ms. Tripp's personnel file,(48) and that he then told Bernath to search the file to find out whether Ms. Tripp had disclosed information about her twenty-year old arrest on her security clearance form.(49) Bacon also testified that he "was very aware of what Mr. Bernath

was doing and . . . did nothing to stop it."[50] Thus, it was a Clinton Administration political appointee, not a career civil servant, who was at the heart of this obvious violation of Ms. Tripp's privacy rights.

This stands in marked contrast to Secretary of Defense William Cohen's public statements that Bernath had acted on his own in releasing the information.[51] Although Secretary Cohen said the release of Ms. Tripp's information was "certainly inappropriate, if not illegal,"[52] neither Secretary Cohen nor the White House told the public about the involvement of Bacon or others.[53] Secretary Cohen said Bernath "was responding to an inquiry from the press" without mentioning that a Clinton political appointee, Bacon, had directed Bernath to do so.[54] Bacon testified that, after Secretary Cohen made his statement on *Fox News Sunday,* he told the Secretary that the statement should be corrected.[55] Yet Bacon testified that he was unaware of Secretary Cohen ever correcting his statement; nor was he aware of either the Department of Defense or the Clinton Administration ever acknowledging publicly he was involved in the release of information in Ms. Tripp's confidential personnel file.[56] When Judicial Watch questioned Bacon about Secretary Cohen's involvement in the matter, Clinton Justice Department lawyers instructed him not to answer.[57] Judicial Watch has moved the Court to compel answers.

Judicial Watch also learned that, after Bernath's role in the release of information in Ms. Tripp's confidential personnel file became known publicly, Bernath apparently attempted to destroy evidence of his wrong-doing. Specifically, Bernath testified that between April 1–10, 1998, he deleted all of the files on his computer's hard drive.[58] Yet Bacon testified that, by March 17 or 18, Bernath told him he "had asked for a legal review" of the circumstances behind the release.[59] This was confirmed by a March 18, 1998 New York Post article in which Pentagon spokesman Lt. Col. Dick Bridges is quoted as stating that Bernath had "requested a Pentagon inquiry to examine the propriety of his actions."[60] Therefore, Bernath had deleted potential evidence from his computer at a time when he obviously knew that his role in the release of information in Ms. Tripp's confidential personnel file would be investigated, if it was not being investigated already. In commenting on Bernath's deletion of files on his computer, the Court stated that "cause for concern should exist when an upper-level government employee completely deletes his hard drive when this hard drive may have information relevant to an ongoing criminal investigation, let alone the instant case,"[61] and "it is highly unusual and suspect for such an action to have been undertaken by Bernath when matters relating to Tripp are being investigated by the Office of the Independent Counsel."[62]

Judicial Watch also discovered that after information in Ms. Tripp's confidential personnel file was released, Bernath was given a new job at higher pay with, ironically, responsibility for teaching about the Privacy Act. Bacon testified that "sometime during the week of March 16th,"[63] he selected Bernath to run the American Forces Information Service, which entitled Bernath to grade and pay increase.[64] It is reported that in his new job, Bernath "has direct control over the Fort Meade school that teaches privacy regulations to public affairs officers."[65] Bacon testified that "I offered him that job because I thought he was the best of the three candidates."[66] It appears far more likely that Bernath was being rewarded for his improper conduct.

Throughout this controversy surrounding the release of information in Ms. Tripp's confidential, Department of Defense personnel file, an unknown factor was whether there had been White House involvement in the release. The key role of Bacon, a political appointee, made that link very likely. Judicial Watch then uncovered the release of a list of over 1,000 individuals whose FBI background files were unlawfully obtained by the Clinton White House.[67] Among the names on the list was Ms. Tripp. Consequently, her FBI background file also had been obtained by the Clinton White House. As an FBI background investigation file would likely contain information on prior arrests, this would seem to answer the question of how Jane Mayer, a former colleague of Sidney Blumenthal and close friend of the Clintons, knew to ask Bacon the precise question of whether Ms. Tripp had disclosed any arrests on her security clearance form. Finally, when Judicial Watch deposed Clinton advisor Harold Ickes on May 21, 1998, it also learned that Ickes had dinner with Bacon and discussed Ms. Tripp and Ms. Lewinsky during the period leading up to the release of the information in Ms. Tripp's confidential personnel file. This indicates a direct link between the Clinton White House and the release of information in Ms. Tripp's confidential personnel file in violation of her Privacy Act rights, obviously in an attempt discredit and intimidate her. Importantly, Ms. Tripp's FBI file was obtained about one (1) year after she began to work in the White House Counsel's Office Bernard Nussbaum. Did the White House know then that Ms. Tripp had the potential to be a whistleblower and thus began gathering information to use against her, if

necessary? At a press conference on the courthouse steps on July 29, 1998, after her Starr grand jury testimony, she stated:

> As a result of simply trying to earn a living, I became aware between 1993 and 1997 of actions by high government officials that may have been against the law. For that period of nearly five years, the things I witnessed concerning several different subjects [at the White House] made me increasingly fearful that this information was dangerous, very dangerous, to possess.(68)

It also appears that, soon after the Lewinsky story became public, the White House Counsel's Office requested information from White House files on Ms. Tripp, Ms. Willey and Ms. Lewinsky. On June 30, 1998, Judicial Watch deposed Terry Good, Director of the White House Office of Records Management ("ORM"). Mr. Good testified that, upon request of the White House Counsel's office, his office searched its computer database for records concerning Ms. Tripp, Ms. Willey and Ms. Lewinsky, and retrieved records on all three (3) individuals.(69)

With regard to Ms. Tripp, Good testified as follows:

> Q: Has any office of the White House or person made a request with regard to information or documentation concerning Linda Tripp?
> A: I believe the counsel's office probably did, yes.
> Q: Who made that request?
> A: I do not know.
> Q: What was that request about?
> A: Again, if I don't remember the request, I can't tell you what it was about. All I can say is it probably was about anything and everything that we might have in our files relating to Linda Tripp."(70)

At about that same time, Representative Gerald Solomon wrote a letter to President Clinton asking whether anyone had pulled Ms. Tripp's White House files. However, Representative Solomon did not receive a response.(71) Representative Solomon cited Good's deposition and the President's failure to respond in a recent letter to Independent Counsel Kenneth Starr, referring to the matter as a "potential obstruction of a Congressional investigation" and "intimidation of a federal witness."(72)

With regard to Ms. Willey, a witness in the Lewinsky investigation, evidence indicates that President Clinton was directly involved in the violation of her Privacy Act rights in an effort to discredit her and harm her reputation. In testifying before the Lewinsky investigation grand jury, Ms. Willey accused President Clinton of making an improper sexual advance towards her in the White House. Ms. Willey then repeated these accusations during a March 15, 1998 television appearance on "60 Minutes." At his deposition, Good testified that, in response to a request from the White House Counsel's Office, ORM searched its files for documents concerning Ms. Willey and obtained a handwritten letter(s) Ms. Willey wrote to the President.(73) The letter(s) was then provided to the White House Counsel's Office, as were documents concerning Ms. Tripp and Ms. Lewinsky.(74) The letter(s) was then released to the media.(75)

According to White House Press Secretary Mike McCurry, "I'm sure the President knew that we were putting the letters out and I'm sure that he approved."(76) In fact, James Carville was forced to admit at his March 16, 1998 deposition in Judicial Watch's "Filegate" investigation that President Clinton sought his advice about Ms. Willey's letters prior to their release:

> Q: When was the last time you talked to the President?
> A: Saturday.
> Q: Was that in person or by phone?
> A: By phone.
> Q: Who called who?
> A: The President called me.
> Q: And how long was the conversation?
> A: Not very long. Maybe five minutes or so.
> Q: What was discussed?
>
> * * *
>
> A: He said that there were some—there was a Kathleen Willey, and what he said was there was some letters that she had written, and they were—his lawyers were considering—I think were considering about making them public, and what did I think about it?
> Q: And what did you tell him?

A: I'm not sure if I know what's in there, but if it was something that was past the time that she made this allegation, it was probably a pretty good idea.

Q: Did he ask you to help make them public?

A: No, sir.[77]

Former White House Chief of Staff Thomas "Mack" McLarty also testified in Judicial Watch's "Filegate" case that he and the President discussed Willey's credibility "a day or two" after her interview on "60 Minutes":

A: . . . After her "60 Minutes" interview, I believe the President commented to me that he thought a mutual friend had made a remark about her credibility was not that high in Richmond. I didn't know the mutual friend. He thought I did. . . .

Q: Who is the mutual friend?

A: I don't recall his name. I didn't know him. I think the President thought I did know him, and I just don't—I don't remember who it was. I didn't know the person.[78]

During his grand jury testimony, the President admitted that Ms. Willey's letters were taken from White House files.[79] He also admitted that he authorized their release,[80] and testified that the letters "shattered Kathleen Willey's credibility."[81] Thus, the Good, Carville and McLarty depositions, and the President's grand jury testimony directly implicate President Clinton in this violation of Ms. Willey's Privacy Act rights in order to discredit and harm her reputation, and thereby undermine the accusations she had made against the President.

Carville appears to have played a significant, if not central role in misusing information in government files against perceived adversaries of the President.[82] When Judicial Watch subpoenaed Carville to appear for a deposition in its "Filegate" investigation, it also required him to produce documents in his possession, custody and control.[83] After a prolonged Court fight over obtaining the required documents, Carville finally gave in and produced voluminous quantities of information in his possession and in the possession of his business entity, Education and Information Project, Inc. ("EIP"). Included among the documents produced to Judicial Watch were facsimiles to Carville from the White House—the Chief of Staffs Office the White House Counsel's Office in particular—enclosing documents on perceived adversaries of the President. These documents included information on Independent Counsel Kenneth Starr, former FBI Agent Gary Aldrich, philanthropist Richard M. Scaife and Republican strategist Donald Sipple.[84] The White House Chief of Staffs Office even faxed excerpts from Sipple's divorce proceedings to Carville.[85]

Judicial Watch's review of documents and other materials provided by Carville and EIP revealed evidence of other likely attempts to destroy and obstruct members of the staff of the Independent Counsel, and Judicial Watch has delivered to the Court tape recordings made by James Carville in this regard. These Carville tape recordings show that Carville was probing into the sexual and personal backgrounds of investigators. As the tape recordings evidence potential obstruction of justice and other criminality, Judicial Watch informed the Independent Counsel of their existence. The Independent Counsel has yet to issue a subpoena for the tape recordings.

Also included among the documents Judicial Watch subpoenaed from Carville and EIP was an EIP "target list" identifying Independent Counsel Kenneth Starr, Speaker Newt Gingrich (indeed, in the September 27, 1998 edition of NBC's "Meet the Press," Carville admitted he was targeting Gingrich), Representative Dan Burton, Senator Fred Thompson and former Secretary of Education Bill Bennett as "Individuals to Target" for "expos[ing] the motives and methods behind Republican partisan attacks against the President and the Democratic Party."[86] At his deposition, Carville also was forced to admit that he stays in regular contact with David Kendall, who hired Terry Lenzner as the President's private investigator.[87] Moreover, former Carville aides and employees—Tom Janenda and Glen Weiner—are now staffing the White House opposition research office.[88] Based on all of the direct and circumstantial evidence obtained thus far, as well as Carville's own repeated threats to destroy Clinton adversaries, he appears to be the "ringleader" of President Clinton's smear operations—in violation of the Privacy Act and other laws.

Carville is apparently not the only Clinton advisor or aide misusing information in government files against perceived adversaries of the President. Lanny Davis, a "Special Counsel to the President," testified at his deposition in Judicial Watch's "Filegate" investigation that he was hired by the Clinton White House Counsel's office and worked closely with that office.[89] That office, which helped to orchestrate the unlawful transfer of hundreds of FBI files, and, according to Linda Tripp, loaded

them onto White House computers, is at the very center of egregious violations of privacy rights and other unlawful conduct.

Davis' testimony shows, at the very least, that he unlawfully maintained a system of records on notable Clinton adversaries without fulfilling the proper notice requirements as mandated by the Privacy Act. Davis testified that during his tenure at the Clinton White House, he personally maintained files containing information about prominent Clinton adversaries, such as Judge Kenneth Starr,(90) Senator Fred Thompson,(91) Representative Dan Burton,(92) Senator Henry Hyde,(93) Monica Lewinsky,(94) Kathleen Willey,(95) and David Hale.(96) Davis also maintained files containing information about Larry Lawrence, Roger Tamraz, Doris Matsui, Webster Hubbell, Nora and Gene Lum, John Huang, Pauline Kachanalak, Johnny Chung, and Charlie Trie.(97) Many of these files were identified, either in whole or in part, by the individual's name, such as "Starr," "Monica Lewinsky," "Kathleen Willey" and "John Huang."(98) Davis also testified that he was "eclectic" in his judgment as to what to put in such files, and that he would generally include any document that he might need to use at some point.(99) Such documents included public statements and stories by the media.(100) Yet, Davis admitted that the media "frequently does not" publish accurate information, undoubtedly thanks to his assistance.(101)

Davis admitted that he maintained these files so that he could disseminate information to the media and thus help them write "good" and "bad" stories.(102) Yet before Davis released information from any of these files to the media, he never consulted with anyone referenced in the materials, never sought their permission, and knew of no one at the Clinton White House who did so.(103) Davis, Ickes and Carville continue to advise the Clinton White House on impeachment and other issues,(104) and it is likely that they continue to receive information from government files.

Judicial Watch also plans to question others in the White House suspected of participating in these unlawful smear operations such as Sidney Blumenthal, Rahm Emanuel, Ann Lewis and Mike McCurry.

In the course of its investigation, Judicial Watch has uncovered evidence of possible crimes involving obstruction of justice and abuse of power. During his deposition in Judicial Watch's "Filegate" investigation, Harold Ickes implicated himself, President Clinton and others in possible obstruction of justice in the Independent Counsel's "Filegate" investigation. After it was publicly reported that Dick Morris had told Sherry Rowlands that Mrs. Clinton was the "mastermind" of "Filegate," Mr. Morris lamely tried to recant in having any independent knowledge of Mrs. Clinton's role. Rather, he claimed that his comments were based on polling data which reflected a public perception that Mrs. Clinton was behind the "Filegate" scandal. Consequently, the Independent Counsel staff subpoenaed the polling data. At his Judicial Watch deposition, Mr. Ickes testified to an effort to delay production of this polling data until after the 1996 elections.(105)

Finally, Judicial Watch is submitting this interim report for Congress' consideration at this time because it has uncovered substantial, additional evidence of unlawful conduct in the Clinton Administration, and because it appears that, while Independent Counsel Kenneth Starr has been given the responsibility to investigate the "Filegate" matter, unfortunately his efforts apparently have been devoted almost exclusively to the Lewinsky and Whitewater investigations.

In fact, it would appear the Independent Counsel's investigation of "Filegate" is still at an early stage, if indeed any real investigation is being conducted at all.(106) Key "Filegate" witnesses recently deposed by Judicial Watch have yet to be questioned by the Independent Counsel about the matter. Thomas "Mack" McLarty, the White House Chief of Staff during the time period the FBI files were obtained unlawfully, incredibly testified that he was never questioned about "Filegate" before a grand jury:

> Q: But you never answered questions concerning Filegate before a Grand Jury, to the best of your knowledge.
>
> A: To the best of my knowledge and memory, that is correct.(107)

Likewise, ORM Director Terry Good, who stored FBI files for Craig Livingstone for several months, testified that he has "never been interviewed by anybody" from the Independent Counsel's office.(108) Earlier this year, the Independent Counsel staff questioned Defendant Hillary Rodham Clinton for only about nine (9) minutes on the subject of "Filegate." According to Mandy Grunwald, one of the Clintons' friends and media advisors, even Mrs. Clinton remarked about the conduct of the Independent Counsel staff in questioning her so briefly. Ms. Grunwald testified that Mrs. Clinton thought the Independent Counsel staff "came to the White House for what was very little business."(109)

Judicial Watch sought to take the deposition of Ms. Tripp on September 4, 1998, but the Independent Counsel intervened to try to convince the Court to postpone the deposition temporarily. In light of the fact that the Independent Counsel's investigation of "Filegate" appears to be in its preliminary stages only and that no meaningful report will likely be forthcoming any time soon, Judicial Watch hopes that the Independent Counsel will withdraw its objection and allow Ms. Tripp's deposition to go forward without further delay. Judicial Watch believes that it is important for the American public to learn what Ms. Tripp witnessed while working in the Clinton White House precisely because the Independent Counsel's report on "Filegate" will not be issued any time soon—particularly since Judicial Watch depositions confirm that its investigation is seemingly still in an infant state.

It is also important that the full facts of "Filegate" be made public at this time because the "Filegate" strategy of misusing information in government files concerns not just the unlawful acquisition of FBI files of former Reagan and Bush Administration appointees and employees, but is part of a continuing campaign to smear witnesses and obstruct justice in the numerous on-going investigations of the President. By smearing, or at least threatening to smear its perceived adversaries and critics, the Administration hopes to intimidate them and gain their silence. This reaction is most typified by the response to Pennsylvania Representative Paul McHale's recent call for President Clinton's resignation. When Representative McHale subsequently appeared on *Rivera Live,*[110] one of the prime mouthpieces of the President, he was confronted with claims that he had misrepresented his military credentials. This type of information concerning military credentials would almost surely have come from government files, and Judicial Watch will seek discovery on this matter. The misuse of information, obstruction of justice and abuse of power apparently has become the last line of defense for a severely weakened Administration. Judicial Watch is thus providing these preliminary results from its "Filegate" investigation so that Congress can be fully informed at this critical time as it considers the future of the Clinton Presidency.[111]

PART II

IRS–GATE

Crimes and Other Offenses Relating to the Misuse of the Internal Revenue Service that Warrant Impeachment and Removal from Office of President Bill Clinton

I. Introduction.

President Clinton's pattern of using government agencies and their files to harass and intimidate those he considers to be his political adversaries apparently extends to the Internal Revenue Service ("IRS"). Among several of his targets was the Western Journalism Center ("WJC").

On May 13, 1998, Judicial Watch, on behalf of WJC, a non-profit organization established to promote education in journalism and investigative reporting,[112] sued former IRS Commissioner Margaret Milner Richardson, IRS agent Thomas Cederquist, and several unnamed IRS officials for violating its First Amendment rights to freedom of speech and freedom of the press, as well as its Fourth Amendment right to freedom from unreasonable searches and seizures. The gravamen of WJC's suit was that these IRS officials violated WJC's constitutional rights in retaliation for WJC's having sponsored an investigation into the death of former Deputy White House Counsel Vincent Foster. Importantly, Ms. Richardson is a close personal friend of First Lady Hillary Rodham Clinton, and had worked on President Clinton's 1992 presidential campaign.[113]

Mr. Foster's death on July 20, 1993 was ruled a suicide by Independent Counsels Robert Fiske, and Kenneth Starr, the United States Park Police, and the Federal Bureau of Investigation. Because the official investigations left significant questions unanswered, WJC sponsored an investigation and published statements that challenged the official results. As a consequence, WJC was targeted by the Clinton Administration and subsequently audited by the IRS. Afterwards, WJC's tax status remained unchanged and no additional taxes or penalties were assessed.[114] However, WJC's ability to investigate and report on government corruption was severely curtailed by the audit.

WJC's lawsuit alleges that the IRS audit was not about taxes; it was about illegal use of the IRS for political retaliation.[115] Thus, the case presents yet another example of the Clinton Administration's use of governmental power to intimidate and destroy its perceived adversaries.

The audit violated WJC's constitutional rights. Not only was WJC subjected to an onerous and burdensome audit to retaliate against it for its prior reporting, but it

also was prevented from further exercising its First Amendment rights, because WJC was forced to devote its limited personnel and resources to the audit instead of to its journalistic endeavors. Because WJC was required to turn over substantial quantities of information and documentation, the audit also violated WJC's Fourth Amendment right of freedom from unreasonable searches and seizures. Also, the audit had a chilling effect on WJC's ability to raise funds.

Evidence indicates that WJC was not the only likely victim of President Clinton's IRS. A later survey by WJC revealed that at "least 20 non-profit organizations 'unfriendly' to the Clinton administration have faced Internal Revenue Service audits since 1993," while "not a single prominent public policy organization friendly to the Clinton Administration has apparently been targeted for audit in the same period, according to two random samples and research into the non-profit community."(116) The targeted organizations included *National Review, American Spectator,* Citizens Against Government Waste and the Heritage Foundation.(117) In January 1997, even the left-leaning Public Broadcasting Service found "that a remarkable number of Bill Clinton's critics have recently become the target of IRS audits."(118)

These reports are consistent with the Clinton Administration's use of the IRS in the White House Travel Office matter. In 1993–94, UltrAir, a charter company used by the White House Travel Office, as well as Billy Dale, the former director of that office, audited by the IRS.(119) Associate Counsel to the President William Kennedy had reportedly sought to have the FBI investigate UltrAir and Dale in order to replace them with allies of the President.(120) Kennedy reportedly advised an official of the FBI that the IRS would be used to investigate the White House Travel Office if the FBI did not do so.(121) Subsequently, both UltrAir and Dale were audited by the IRS, with no income tax violations being found.(122)

II. Background of the WJC.

WJC is a 501(c)(3) tax-exempt, charitable organization and, as such, pays no federal income tax. WJC was granted 501(c)(3) status by the IRS in August of 1996.

WJC's operations are funded by contributions from its supporters and foundations, who, in turn, are able to deduct these contributions from their own federal income taxes. WJC's contributors rely on WJC's 501(c)(3) status when making contributions.

WJC's journalism credentials are substantial. It was founded by Joseph Farah, an award-winning journalist and former editor of *The Sacramento Union,* and James G. Smith, the former President of *The Washington Star,* to promote journalism education and investigative reporting. WJC was formerly the publisher of *Inside California,* which focused primarily on investigations concerning the state of California. WJC currently is the publisher of *Dispatches,* a bi-weekly investigative publication that focuses primarily on national events. Its extensive investigative reporting has been widely cited and credited in such influential national publications as *The Los Angeles Times, The Oakland Tribune, The Orange County Register, The Sacramento Bee, The San Francisco Chronicle, The San Francisco Examiner, The Wall Street Journal* and *Investor's Business Daily.*

WJC's investigative reporting is non-partisan. For example, it undertook an extensive investigation into the National Education Association's political power. It also undertook a substantial investigation into the "militarization" of the federal government during both Republican and Democratic administrations. It also undertook an extensive investigation into corruption, waste, fraud and abuse in California government during a Republican administration.

III. Details of the Harassment.

The audit clearly was intended to harass WJC. In July 1996, WJC learned that it was being audited by the IRS. On at least two separate occasions, the IRS agent conducting the audit, defendant Thomas Cederquist, admitted to WJC's accountant that "this is a political case," and "the decision is going to be made at the national level."

During the course of the audit, WJC was asked to produce documents about its decision to undertake an investigation into Mr. Foster's death and about why opposing viewpoints were not presented in published statements about its investigation. At least five (5) IRS "Information Document Requests" (Form 4565) were served on WJC demanding the production of thousands of pages of documents and substantial quantities of information. One document request, dated August 16, 1996, sought the following materials, among others, relating directly to the investigation into Foster's death:

> Copies of all documents relating to the selection of Christopher Ruddy as an investigative reporter and how the topic was selected. Who was on the review committee? What review process is used for peer review? Were any

other projects considered? What about any opposing viewpoints? Why were they not presented in your advertisements?[123]

When WJC's executive director challenged the audit as being retaliatory in an opinion article published in *The Wall Street Journal*[124] and charged that the IRS had undertaken other politically-inspired audits of perceived adversaries of President Clinton and his Administration, the scope of the audit was enlarged. The IRS then began audits of two of WJC's largest individual donors, as well as several individuals WJC had retained to provide expert and research services for its Foster investigation.

Evidence unknown to WJC at the time, but later revealed, showed Clinton Administration targeting of WJC. WJC learned of a December 1994 internal memorandum prepared by Associate White House Counsel Jane C. Sherburne that outlined strategies for addressing various political scandals confronting President Clinton and his Administration.[125] WJC was specifically named in the memorandum for its investigation into Foster's death.[126] WJC later learned of a 1995 report prepared by the White House Counsel's Office in conjunction with the Democratic National Committee entitled "Communication Stream of Conspiracy Commerce," that purported to document a "right wing" conspiracy to convey "fringe" stories about political scandals to the mainstream media.[127] The first news organization identified on the first page of this report was WJC.[128]

The tremendous burden imposed on WJC because of the tax audit, including the time WJC was forced to devote to the audit and the funds it was compelled to expend, severely curtailed WJC's ability to exercise its First Amendment rights. WJC was effectively forced to shut down its investigative reporting and other activities, including its investigation into Foster's death. One of WJC's investigative reporting publications, *Inside California,* was terminated as a result of the audit.[129]

Because of the audit, several foundations and other contributors who had made donations to WJC in the past and/or were considering making donations to WJC, decided against making new and/or additional donations either because they feared retaliatory audits or because they feared that the ongoing audit would lead to the revocation of WJC's 501(c)(3) tax exempt status and, consequently, that their donations would not be tax-deductible. As a result of this funding loss, WJC was forced to lay off at least two members of its already small staff, which further limited WJC's ability to exercise its First Amendment rights.

In May 1997, defendant Cederquist undertook a two-day examination of documentation in WJC's offices. Cederquist did not appear for the second day of this examination, however, as IRS Agent John Grisso appeared in Cederquist's place. During this second day of the examination, Agent Grisso stated to Farah that he did not understand why so much time and energy had been devoted to the WJC audit because "there was nothing there." Agent Grisso advised Farah that he would recommend that a "no-change" letter be issued.

Ultimately, the Clinton Administration failed to destroy WJC, which has become an influential source of news and commentary on the Internet.

IV. Conclusion.

The likely reason for the audit was to retaliate against WJC for sponsoring an investigation into the Foster death, punish it for challenging the results of the official investigations, limit its ability to continue to both investigate and publish materials perceived as being harmful to the President and his Administration, and discourage potential donors from contributing.

The lawsuit is based on *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Investigation,* 403 U.S. 388 (1971), wherein the U.S. Supreme Court declared that federal officials may be held liable in their individual capacities for violating a person's constitutional rights while acting under color of federal law. Judicial Watch expects the lawsuit to serve as a warning and deterrent to IRS officials, that they cannot violate citizens' constitutional rights without being held personally accountable.

This personal accountability includes President Clinton. Any impeachment inquiry should include the misuse of the IRS, as demonstrated by the experience of WJC and other organizations that President Clinton perceives as his adversaries.[130]

PART III

COMMERCEGATE / CHINAGATE

Crimes and Other Offenses Relating to the Illegal Sale of U.S. Department of Commerce Trade Mission Seats for Campaign Contributions that Warrant Impeachment and Removal from Office of President Bill Clinton

I. Introduction.

After the elections of 1994, and the Democrats' loss of Congress, I became aware, through my discussions with [late Commerce Secretary] Ron [Brown], that the trade missions were being used as a fundraising tool for the upcoming Clinton-Gore presidential campaign and the Democratic Party. Specifically, Ron told me that domestic companies were being solicited to donate large sums of money in exchange for their selection to participate on trade missions of the Commerce Department. Ron expressed to me his displeasure that the purpose of the Commerce trade missions had been and were being perverted at the direction of The White House.

Affidavit of Nolanda Butler Hill, January 17, 1998 (131)

* * * * *

Question: You are aware, however, that Alexis Herman would set up briefing sessions for participants that went on trade missions before they went overseas? You were aware of that?

Nolanda Hill: I was.

Question: And at those briefing sessions appeared the President and Vice President.

Nolanda Hill: I was told that by Secretary Brown.

* * * * *

Question: You've mentioned, to some extent—I'll let your testimony speak for itself—Harold Ickes. Anybody else? . . .

Nolanda Hill: Ultimately, [Ron Brown] believed that the President of the United States was, at least tangentially.

Question: Involved?

Nolanda Hill: Yes, sir. It was his re-election that was at stake.

Question: Ron believed that the President of the United States knew the trade missions were being sold and their purpose being perverted?

Nolanda Hill: Yes, sir.

Nolanda Butler Hill Court Testimony, March 23, 1998 (132)

In the Fall of 1994, Judicial Watch first became aware of evidence that the Clinton Commerce Department was illegally selling seats on its international trade missions in exchange for political contributions.(133) Reports in *Business Week and The Wall Street Journal* showed that there was a high incidence of Democratic Party contributors on these taxpayer-financed trade missions.(134)

The fact that the President installed the former head of the Democratic National Committee, Ronald H. Brown, as Commerce Secretary also raised concerns about Clinton Commerce Department operations. When Brown brought his entire DNC fundraising staff with him to Clinton Commerce, these suspicions increased.

After Judicial Watch filed requests with the Clinton Commerce Department for information regarding these trade missions under the Freedom of Information Act ("FOIA"), it was immediately stonewalled and was forced to file a lawsuit in 1995 to obtain the requested information.(135) Even after filing suit, the Clinton Administration continued to stonewall.(136)

Over the next three (3) years, Judicial Watch, in its efforts to uncover what the Clinton Commerce Department was hiding from the American people, found substantial, compelling evidence that seats on Clinton Commerce Department trade missions were indeed being sold in exchange for campaign contributions, with the knowledge and complicity, if not at the direction of, officials at the highest levels of the Clinton White House, including the President, Hillary Rodham Clinton and Vice President Al Gore. In addition, Judicial Watch's attempts to uncover the truth were obstructed through perjury, obstruction of justice, intimidation and retaliation that has marred other recent investigation of Clinton scandals, including the Paula Jones and Monica Lewinsky matters. In short, the court process was obstructed by Clinton appointees at his Commerce Department and elsewhere by:

- Perjury;
- Submission of false sworn declarations;
- Destruction and shredding of evidence;

- Improperly withholding documents contrary to Court orders;
- Threats and intimidation of witnesses and investigators; and
- Misconduct by Clinton Administration lawyers.

Nevertheless, Judicial Watch, through its investigations and the legal discovery process, found "smoking gun" documents detailing the sale the trade mission seats for campaign contributions in the files of the Clinton White House, Clinton Commerce Department, and the DNC, including:

- Memos from the Clinton White House files of Harold Ickes and Alexis Herman showing that the $100,000 DNC Managing Trustee Program included the sale of the Clinton Commerce Department trade mission seats (among other government-financed perks) and was designed to net President Clinton's DNC political operation $40 million;[137]
- A brochure by the Democratic National Committee showing that "foreign trade mission" seats were available for $100,000 contributions to the DNC;[138]
- A list of DNC minority donors found in the files of a key Clinton Commerce Department Official;[139]
- A Clinton Commerce Department memo indicating that the DNC donors were input into the Commerce Department government database;[140] and
- A DNC memo showing that the DNC provided the names of donors to the Clinton Commerce Department for trade missions to Russia and Belgium.[141]

In January 1998, Judicial Watch uncovered a witness, Nolanda Butler Hill, a close confidante and business partner of late Commerce Secretary Brown, with whom Secretary Brown had shared key details about the campaign-contributions-for-seats-on-trade-missions scheme, as well as the Clinton Administration's efforts to stonewall Judicial Watch's lawsuit. Secretary Brown had even shown important documents to Ms. Hill that detailed this unlawful sale of taxpayer-financed government services. With Ms. Hill's uncontroverted testimony providing the capstone to its investigation, Judicial Watch has proven beyond all reasonable doubt that not only was the Clinton Administration engaged in an unlawful scheme to sell seats on Commerce Department trade missions in exchange for campaign contributions, but that a criminal cover-up was ordered by President Clinton's top aides to thwart Judicial Watch's Court-ordered investigation and to hide the culpability of the President, Mrs. Clinton, the Clinton Administration and the DNC for their use of Commerce Department trade missions as a political fundraising vehicle.

Ms. Hill testified that then White House Chief of Staff Leon Panetta and Deputy Chief of Staff John Podesta ordered Commerce Secretary Brown to defy Court orders and obstruct the Judicial Watch suit until after the 1996 federal elections. Ms. Hill's sworn testimony implicated the President's top staff members in obstruction of justice.

Ms. Hill also tied the sale of trade mission seats directly to President Clinton. In both a sworn affidavit and Court testimony, Ms. Hill explained that:

- The First Lady conceived of the idea to sell the trade mission seats in exchange for political contributions;
- The President knew of and approved this scheme;
- The Vice President participated in this scheme;
- Commerce Secretary Ron Brown helped implement the illegal fundraising operation out of the Clinton Commerce Department;
- Presidential White House aides Harold Ickes and (now Labor Secretary) Alexis Herman helped orchestrate the sale of the Commerce trade mission seats;
- The President's top fundraisers at the DNC and his reselection campaign (Marvin Rosen and Terrence McAuliffe) helped coordinate the selling of these taxpayer resources in exchange for political contributions;
- Presidential Chief of Staff Leon Panetta and Deputy Chief of Staff John Podesta ordered the cover-up of these activities; and
- The President's appointees at the Commerce Department have committed perjury, destroyed and suppressed evidence, and likely breached our nation's security.

Even more troubling than the revelations about the unlawful sale of seats on Commerce Department trade missions in exchange for campaign contributions, and the criminal cover-up that followed,[142] is evidence of likely national security breaches also uncovered by Judicial Watch's investigation. From the beginning of Judicial Watch's investigation, national security issues always were a concern. In

fact, Bernard Schwartz of Loral Space and Communications Corporation ("Loral"), a major Clinton donor who had participated in a key 1994 trade mission to China and was quoted in the *Business Week* and *The Wall Street Journal* articles that helped pique Judicial Watch's interest in the trade missions, now stands at the heart of a scandal over Clinton Commerce Department-approved missile technology transfers to China. Documents relating to Schwartz, Loral, and other entities involved in the current China technology transfer scandal were among those requested by Judicial Watch in its first FOIA request to the Clinton Commerce Department. Schwartz went on this key trade mission to China with Secretary Brown shortly after making a $100,000 contribution to the DNC. During the trade mission, Secretary Brown set up an important meeting for Schwartz with a Chinese government official that later led to the missile deals that are now the subject of various national security investigations.

In addition, Judicial Watch also uncovered the removal by Ira Sockowitz, an official at the Clinton Commerce Department and confidante of alleged Chinese agent John Huang, of top secret documents relating to satellite encryption and intelligence reports on China, Russia and India. These documents have since been impounded by Court order. Other documents, which have been withheld by the Clinton Commerce Department, indicate that Ron Brown's Chief of Staff at the Clinton Commerce Department, William Ginsburg, kept allegedly *personal* diaries detailing "state secrets," including information on satellite surveillance, intelligence personnel and capabilities, notes of a meeting of the National Security Council, among other "national security" information.[143] He too removed documents from the Department when he left its employ.

The Judicial Watch investigation also uncovered John Huang, the Commerce official/DNC fundraiser now believed to have been a spy for the Chinese Government. To date, Judicial Watch lawyers are the only investigators to have questioned John Huang under oath. Since Judicial Watch deposed Huang in October 1996, it has been learned, largely contrary to his sworn testimony, that Huang:

- Raised money for the DNC while at the Clinton Commerce Department;
- Received over 100 top secret intelligence briefings at Commerce;
- Continued his contacts while at the Clinton Commerce Department with his former employers at the Lippo Group, an Indonesian company that has also been linked to Chinese intelligence;
- While still working at the Clinton Commerce Department, had access to the office of Stephens, Inc., a firm with close ties to the Lippo Group; and
- Maintained contact with the Chinese Government.[144]

According to President Clinton, Huang is a close friend—going back to his governorships in Little Rock.

Indeed, any complete understanding of China's plan to influence the electoral process and spy on American interests must begin with an examination of the operations of President Clinton's Commerce Department. Many of the key figures associated with the "Chinagate" scandal all had direct connections to it:

John Huang worked for the Clinton Commerce Department, before moving to the DNC.

Commerce Secretary Ron Brown, now deceased, organized the Clinton Commerce Department trade missions to China now under scrutiny.

Johnny Chung informally participated in the Clinton Commerce Department trade mission to China in 1994. Chung later admitted to funneling $100,000 from the Chinese military to the DNC.

Bernard Schwartz, Chief Executive Officer of Loral, participated in the Clinton Commerce Department trade mission to China in 1994.

Charlie Trie, who was indicted earlier this year on charges that he illegally funneled foreign money to the Democrats, also participated in the 1994 Clinton Commerce Department China trade mission.

Wang Jun, the powerful Chinese communist "princeling" and friend of Clinton fundraiser Charlie Trie, met with Secretary Ron Brown shortly after attending a fundraising coffee with President Clinton. The same day as Wang Jun's meeting with Secretary Brown, President Clinton signed a controversial waiver allowing Bernard Schwartz's Loral to work with the Chinese on launching a satellite into space.[145]

James and Mochtar Riady's Lippo Group, in addition to benefitting from ex-employee John Huang's placement at Commerce, benefitted directly from deals negotiated by him on Clinton Commerce Department trade missions.

The DNC, the recipient of most of the illegal foreign money, coordinated with the Clinton Commerce Department and White House to sell seats on the taxpayer-financed trade missions.

In short, the crimes at the Clinton Commerce Department were not solely related to the illegal sale of taxpayer-financed trade mission seats in exchange for political contributions, but likely include breaches of national security as well. Key Clinton fundraisers such as John Huang, the Riadys, Charlie Trie, Marvin Rosen and Terry McAuliffe, were able to use the Clinton Commerce Department for the benefit of their overseas patrons, while DNC donors such as Loral's Bernard Schwartz and Johnny Chung were allowed to use the Clinton Commerce Department trade missions as the means to advance their business dealings with the Chinese government—business dealings that eventually led to the illegal transfer of missile and other high technology to China, and the transfers of hundreds of thousands of illegal dollars from the Chinese Government to the DNC; an obvious *quid pro quo.*

Congress now has before it other evidence, uncovered by Independent Counsel Kenneth Starr's investigation, that President Clinton has committed impeachable acts relating to the Paula Jones sexual harassment lawsuit, and other issues that warrant his impeachment and removal from office. President Clinton's misuse of his Commerce Department for political fundraising and the subsequent cover-up, and the national security breaches that likely resulted from this scheme, provide even more compelling evidence of why he must be impeached, removed from office, and, at the appropriate time, subject to criminal prosecution along with those that aided and abetted him.

II. Judicial Watch's Investigation Has Uncovered Substantial, Compelling Evidence that Seats on Taxpayer-Financed, Commerce Department Trade Missions Were Sold in Exchange for Campaign Contributions.

During the course of its investigation, Judicial Watch discovered substantial, compelling evidence that the Clinton Administration sold seats on taxpayer-financed Commerce Department trade missions in exchange for campaign contributions to the DNC/1996 Clinton-Gore re-election campaign.

At a March 23, 1998 evidentiary hearing in Judicial Watch's FOIA lawsuit, Ms. Nolanda B. Hill, a close confidante and business partner of the late Commerce Secretary Ron Brown,[146] testified, under oath, that Secretary Brown told her that he was ordered by the Clinton White House to begin selling Commerce trade mission seats in exchange for political contributions to the DNC/1996 Clinton-Gore re-election campaign.[147] Ms. Hill's oral testimony confirmed written testimony she had given to Judicial Watch in an affidavit on January 17, 1998:

> After the elections of 1994, and the Democrats' loss of Congress, I became aware, through my discussions with Ron [Brown], that the trade missions were being used as a fundraising tool for the upcoming Clinton-Gore presidential campaign and the Democratic Party. Specifically, Ron told me that domestic companies were being solicited to donate large sums of money in exchange for their selection to participate on trade missions of the Commerce Department. Ron expressed to me his displeasure that the purpose of the Commerce trade missions had been and were being perverted at the direction of The White House.[148]

According to what Secretary Brown told Ms. Hill, the trade mission seats were being sold in part because of "panic" by the President and First Lady induced by their Democratic Party's loss of Congress to the Republicans in 1994:

> [Ron Brown's] discussion with me centered around the panic of—or his perception of panic—with the President and First Lady, after the loss of Congress to the Republicans, and that that was going to—they were afraid they wouldn't be able to raise money, and they were really worried about it.[149]

Ms. Hill testified that Secretary Brown told her that it was Hillary Rodham Clinton who ordered that the trade mission seats be sold:

> Q: And did he not say to you that—and I am kind of paraphrasing—Hillary believes that every thing is politics and politics is driven by money; correct?
>
> A: He did say those—close to those words, as I recall. . . .
>
> Q: And he told that you that, in fact, it was Hillary's idea to use the trade missions to raise money; correct?
>
> A: He initially believed that she was very instrumental, and he gave her a lot of credit.[150]

Secretary Brown told Ms. Hill that he was "[j]ust doing my chores for Hillary Rodham Clinton" and he complained, "I'm not a mother"—expletive deleted—"king tour guide for Hillary Clinton."(151)

Importantly, Secretary Brown told Hill that the President himself was involved in the sale of seats on Commerce Department trade missions:

> A: Ultimately he believed that the President of the United States was, at least tangentially.
> Q: Involved?
> A: Yes sir. It was his re-election that was at stake.
> Q: Ron believed that the President of the United States knew the trade missions were being sold, and their purpose was being perverted?
> A: Yes, sir.(152)

In fact, Ms. Hill testified that Secretary Brown resented the Clinton's involvement in the misuse of the Commerce Department trade missions, which he believed had become nothing more than a "street level protection racket."(153)

Ms. Hill also testified that, in addition to the President and Mrs. Clinton, high level Clinton Administration officials were also directly involved. The Commerce Department's Office of Business Liaison, then run by former DNC fundraiser Melissa Moss, worked with the President's Office of Public Liaison at the White House, then run by Labor Secretary Alexis Herman, to set up White House "briefing sessions" for trade mission participants with either President Clinton or Vice President Gore, or both.(154) Hill also testified that Clinton's top political aide, former Deputy Chief of Staff Harold Ickes, served as the White House's "point man" for the sale of seats on Commerce Department trade missions:

> Q: . . . Harold Ickes was involved in the sale of trade missions, too, wasn't he?
> A: It was my understanding through Secretary Brown that Mr. Ickes was the political point man for the White House. . . . Mr. Ickes, according to what Secretary Brown told me, participated heavily in determining what happened from a political standpoint.(155)

Clinton's top political fundraisers for the DNC and his re-election campaign, Terry McAuliffe and Marvin Rosen, were also heavily involved in the illegal sale of the trade mission trips, according to what Secretary Brown told Ms. Hill:

> Q: And [Terry McAuliffe] was instrumental, based on your discussions with Ron, in working with the White House and coordinating the sale of seats on trade missions; correct?
> A: He was certainly highly involved, according to Ron.
>
> * * * * *
>
> Q: And another person who was highly involved from the DNC in coordinating the sale of seats on trade missions for campaign contributions was Marvin Rosen; correct?
> A: I understood from Ron that that was correct.
> Q: And these people worked with the White House in furthering what Ron thought was a perversion of his trade missions; correct?
> A: That's correct.(156)

Indeed, the sworn testimony of Ms. Hill indicated that donors had to pay the DNC/Clinton-Gore campaign a minimum of $50,000 in order to receive access to government services—Commerce trade mission seats:

> In early 1996, Ron showed me a packet of documents, about 1 inch thick, which he removed from his ostrich skin portfolio. Ron told me that these documents had been provided to him from Commerce Department files as part of the collections efforts to produce documents to Judicial Watch in this case. I only reviewed the top five or six documents, which were on Commerce Department letterhead under the signature of Melissa Moss of the Office of Business Liaison. What I reviewed comprised letters of Ms. Moss to trade mission participants, each of which specifically referenced a substantial financial contribution to the Democratic National Committee (DNC). My response was immediate and decisive. I told Ron he must instruct that production of these documents and all responsive documents be immediate and I advised him to mitigate his own damages by releasing Ms. Moss from her duties and admonishing her for using the offices of the Commerce Department for partisan political fundraising.(157)

Ms. Hill testified in open Court that she understood that $50,000 was the minimum "the White House was charging to go on a trade mission. . . ."[158] According to Ms. Hill, Secretary Brown was personally offended that the White House put such a low dollar figure on his trade trips. "I'm worth more than $50,000 a pop," Secretary Brown told her.[159] A DNC brochure soliciting members for its "Managing Trustee" program shows that participation in "foreign trade missions" was only one of the perks available to a contributor who donated at least $100,000 to the DNC.[160] Documents from the White House files of Harold Ickes and Alexis Herman also clearly show that the $100,000 DNC Managing Trustee Program, which included trade missions, among other taxpayer-financed *quid pro quos*, was designed to net President Clinton's DNC political operation $40 million.[161] Importantly, Alexis Herman was listed on the documents as the person to see to purchase a "ticket" on a Clinton Commerce Department trade mission.[162]

Additional evidence corroborates Ms. Hill's testimony that seats on Clinton Commerce Department trade missions were being sold in exchange for contributions to the DNC/1996 Clinton-Gore re-election campaign. In the course of discovery in its FOIA litigation, Judicial Watch discovered a list of DNC "minority donors" in the possession of the Clinton Commerce Department.[163] Apparently, this list of DNC contributors had been sent by the DNC to the Commerce Department to select participants on trade missions.

Just recently, Judicial Watch discovered additional documents from the DNC that provide further corroboration of Ms. Hill's testimony. A January 13, 1994 memorandum from DNC official Eric Silden clearly demonstrates the DNC's direct role in selecting participants for Commerce Department trade missions:

> *Sally Painter at Commerce called to ask for a list of candidates for a trade mission to Russia. She needs an initial list by tomorrow (Friday 1/14) of* 20–30 names. . . . Ari will use the "Belgium trade mission list" as a base of names, to be augmented by additional names that he feels are relevant to Russian trade. It was suggested that he contact Reta Lewis to determine which names on the Belgium list will be included in the delegation, so that they are not also submitted to Commerce for the Russian delegation. . . . Bob will be the point contact with Commerce, as I will not be in the office on Friday afternoon to deliver the list to Sally. (Emphasis added.)[164]

Judicial Watch has subpoenaed similar materials from the DNC, and will depose top DNC officials Terry McAuliffe and Marvin Rosen in the next few weeks. Even without the additional evidence that Judicial Watch is likely to uncover, it is clear that during the Clinton Administration, the Commerce Department has become nothing more than an arm of the DNC, where taxpayer-financed government services can be bought and sold in exchange for campaign contributions. Even the liberal Center for Public Integrity, after examining some of the evidence uncovered by Judicial Watch, concluded this was a "pay to play" scheme:

> When Ron Brown was simultaneously a partner at the preeminent Washington law and lobbying firm of Patton, Boggs and Blow and chairman of the Democratic National Committee (DNC), he was renowned as the consummate deal-maker. By all appearances, Brown's Department of Commerce has continued to apply the art of the deal. As one Justice Department investigator put it, a corporation can "pay to play." American giants such as AT&T and ARCO, among others, which made contributions to the DNC, have gotten seats on Brown's plane when he has traveled to far-off lands to meet with foreign governments in an effort to promote American business.
>
> The seat on the secretary's plane can be viewed essentially as the quo in the quid pro quo relationship between contributors and the administration. Those DNC contributors, with Brown's assistance, were in a position to cut their own deals for projects in those foreign countries whose representatives attended meetings with the U.S. delegation. Some companies came away from the trips with million and sometimes billion dollar deals.
>
> Others came away with expanded business contacts that led to future deals. And others went in search of tax breaks. For example, gas and oil company representatives on the Russia trip argued for a lowering of the excise tax on oil imposed by the Yelstin government. The Texas-based TGV/Diamond Shamrock company came away from the South America trip with a tax break from Argentina worth an estimated $20–$30 million.[165]

In sum, Judicial Watch has uncovered substantial, compelling evidence demonstrating a massive sell-off of taxpayer-financed services—namely seats on Commerce Department trade missions—upon the orders of, and with the direct knowl-

edge and participation, of the President and Mrs. Clinton. This illegal sale of taxpayer-financed services violates several federal statutes against the misappropriation of government funds, bribery and graft, as well as a host of campaign fundraising statutes, including but hardly limited to 18 U.S.C. § 600, *et seq.*

III. The Cover-Up.

Judicial Watch's attempts to uncover evidence of the unlawful sale of seats on Commerce Department trade missions began immediately after Judicial Watch filed its September 12, 1994, September 13, 1994 and October 19, 1994 FOIA requests, which were thwarted at every turn.[166]

After the Clinton Commerce Department received Judicial Watch's FOIA requests, Melissa Moss, a former DNC fundraiser who became Director of the Department's Office of Business Liaison, telephoned Judicial Watch Chairman Larry Klayman on October 18, 1994 to try to persuade Judicial Watch to substantially limit the scope of the FOIA request.[167] When Mr. Klayman refused to limit the scope of the request, Moss abruptly ended the conversation, angrily slamming the phone down.[168] The following day, October 19, 1994, Ms. Moss sent Judicial Watch a letter via facsimile falsely claiming that Judicial Watch had, in fact, voluntarily agreed to limit the scope of its FOIA request to a list of trade mission participants.[169] Judicial Watch wrote back to Ms. Moss that same day to correct her false statements.[170] Judicial Watch believes that the likely intent behind Ms. Moss' false facsimile was to create a false record if litigation ensued.

Moss had more reason to be worried than angry. Ms. Hill would later testify that she reviewed letters from Ms. Moss to trade mission participants, on Department letterhead, detailing the campaign-contribution-for-trade-mission-seat scheme that would be withheld from Judicial Watch in violation of FOIA and in contravention of a Federal Court order. According to Ms. Hill, Moss placed that telephone call with Secretary Brown's knowledge, to try and convince Judicial Watch not to pursue its FOIA requests regarding the trade missions.[171] Moss' telephone call and false facsimile to Mr. Klayman in 1994 were among the first known efforts by a Clinton Administration official to cover-up the fact that taxpayer-financed government services were being sold in exchange for political contributions. It was far from being the last.

In January 1995, Judicial Watch was forced to file suit in federal district court after the Commerce Department failed to turn over the requested information on trade mission trips pursuant to FOIA.[172] Not coincidentally, the Clinton Commerce Department then tried to create the appearance of complying with the FOIA, and in doing so it cleverly attempted to place Judicial Watch in a "Catch-22." It required that Judicial Watch pay $13,131 in alleged search and duplication costs in order to obtain the requested documents.[173] As an all-volunteer, non-profit organization, Judicial Watch simply could not afford such an exorbitant fee. Seeing through this ruse, the Court ordered the Clinton Commerce Department to agree to produce responsive documents under a fee waiver, within twenty-four (24) hours.[174]

The Commerce Department then produced some 28,000 pages of documents. Notably absent from this production of documents, however, was any correspondence, notes or memoranda of Secretary Brown, or any documents to or from the White House and/or the DNC concerning trade missions. The failure to produce such documents was inexplicable, if not incredible, and provided *prima facie* evidence that the Clinton Commerce Department had withheld documents.[175]

At approximately this same time, the Clinton Commerce Department provided Judicial Watch with a *Vaughn* index of documents allegedly exempt from FOIA.[176] Because of its suspicions that the Clinton Commerce Department had not produced all responsive documents, and because of the Clinton Commerce Department's previous lack of straightforwardness, Judicial Watch asked the Court to review a portion of the withheld documents *in camera.* After this *in camera* review, the Court found that the Clinton Commerce Department's *Vaughn* index "fail[ed] in many instances 'to supply [the Court] with even the minimal information necessary to make a determination' of whether the documents [were] properly withheld."[177] Accordingly, the Court directed that a second *Vaughn* index be prepared and allowed Judicial Watch to begin discovery into the Clinton Commerce Department's search for responsive documents.[178] After the submission of a revised *Vaughn* index and a second *in camera* review, the Court determined that fully one half of the documents that the Clinton Commerce Department was withholding from Judicial Watch were, in whole or in part, improperly claimed as being exempt from FOIA.[179]

Importantly, at that point the Court could have simply ordered the Clinton Commerce Department to conduct a second search for responsive documents. However, given the Clinton Commerce Department's previous failure to respond and its improper withholding of responsive documents, the Court obviously recognized the fu-

tility of a second search. Moreover, given that two (2) years had already passed since Judicial Watch submitted its first FOIA requests, the Clinton Commerce Department would have had substantial opportunity to remove, if not destroy, responsive documents—which, as shown by subsequent discovery, turned out to be the case. Thus, the only true option was to allow discovery into the adequacy of the first search and the whereabouts of other responsive documents. The Court thus permitted Judicial Watch to question Commerce Department officials under oath about their "search" for requested documents.(180)

The discovery process commenced, and Judicial Watch began the investigation that would ultimately expose John Huang and spark the campaign finance and "Chinagate" scandals. President Clinton's agents grew increasingly worried about Judicial Watch's lawsuit and increased their efforts to cover-up the sale of trade mission seats. Ms. Hill later testified that:

> In the spring of 1995, when this Court ordered production of documents to Judicial Watch, Ron [Brown] became very concerned and he thus began to discuss with me the strategy of handling the defense of the Judicial Watch lawsuit.
>
> * * * * *
>
> In late fall 1995, after several rulings or statements by this court, Ron himself became more involved in the defense of the case. Specifically, he told me that he had decided to personally review any documents that might be damaging to the Clinton Administration, or in any way be sensitive. *Ron told me that he was very worried about the potential damage of the Judicial Watch case to the Clinton Administration.*(181) (Emphasis added.)

In fact, Secretary Brown took the extraordinary step of turning over responsibility for responding to Judicial Watch's FOIA requests to the Office of the Secretary. This was confirmed in a telephone conversation with Judicial Watch Chairman Larry Klayman prior to the commencement of the lawsuit. During that phone conversation Brenda Dolan, a Clinton Commerce Department FOIA officer, admitted that Judicial Watch's FOIA requests had been taken from her and given to the Office of the Secretary. She further admitted that this was a highly unusual occurrence that did not square with usual Department procedures.(182)

Secretary Brown personally involved himself in the FOIA process because of his concerns about what the Judicial Watch suit might expose. He also was ordered to do so by the Clinton White House, with whom he stayed in routine contact about the case.(183) As Ms. Hill would later testify in both her January 17, 1998 affidavit and at the March 23, 1998 evidentiary hearing, President Clinton's two top deputies, then White House Chief of Staff Leon Panetta, and Deputy Chief of Staff John Podesta, directly ordered Brown to defy the Court's orders and obstruct the Judicial Watch suit until after the 1996 elections:

> I further learned through discussions with Ron [Brown] that The White House, through Leon Panetta and John Podesta, had instructed him to delay the case by withholding the production of documents prior to the 1996 elections, and to *devise a way not to comply with the court's orders.*(184) (Emphasis added.)
>
> * * * * *
>
> Q: And that Leon Panetta had told Ron that, quote, "He had the responsibility of containing the Judicial Watch lawsuit?"
> A: Yes.
> Q: And you responded to Ron, did you not, by telling him that that strategy of stall, stall, stall would not work forever?
> A: Yes, in part.(185)

Weekly reports sent by Secretary Brown to Chief of Staff Leon Panetta at the Clinton White House confirm Panetta's involvement, as they discussed the status of Judicial Watch's FOIA requests.(186)

Ms. Hill would later testify about Mr. Panetta's and Mr. Podesta's efforts to obstruct justice and cover-up the sale of trade mission seats for the President's re-election effort:

> Q: And you learned that Leon Panetta and John Podesta had instructed him to delay the case for political reasons?
> A: Yes.
> Q: Now, do you remember Ron saying to you that Panetta and Podesta wanted him to, quote, "slow pedal" the case until after the [1996] elections? Those were the words that were used, was it not?

A: Yes.
Q: And that Ron mimicked Leon Panetta and laughed when he used the words "slow pedal?"
A: Well, he did a pretty good Leon Panetta.
Q: Imitation?
A: (Nods head affirmatively.)[187]

Ms. Hill's testimony indicates that the President was *personally* aware of this unlawful obstruction. She would later testify that, shortly after she saw Commerce Department correspondence indicating that trade mission seats were being sold in exchange for political contributions, Secretary Brown and the President had a meeting. This meeting occurred just before Brown took his fateful trip to Croatia:[188]

Q: What did he tell you was the reason he went to see the President?
A: . . . It concerned the independent counsel investigation.
Q: Ron was also concerned about the situation at the Commerce Department; correct?
A: He was very concerned about the attempt by Congress to shut down the Commerce Department.
Q: And he was also concerned about this lawsuit; correct, Judicial Watch's lawsuit?
A: He was concerned about it, yes, sir.
Q: And you had actually suggested to him that he go see the President, didn't you?
A: I suggested to him that that—yes, I did.
Q: And Ron relayed to you—there was a meeting between Ron and the President at that time, Ron told you; did he not?
A: Ron told me that there was.[189]

The evidence thus shows that key White House officials, acting on the likely command of the President himself, ordered Secretary Brown to obstruct the lawsuit and defy Court orders. This obstruction of justice would involve the use of perjury, the destruction of documents and threats and intimidation of witnesses and investigators.

A. False Sworn Declarations

Secretary Brown himself submitted a sworn statement, which Judicial Watch later learned was patently false and misleading. In his March 14, 1996 declaration, Secretary Brown testified:

> 1. I did not direct, supervise, or otherwise participate in determining, the scope of the Department of Commerce's search for and/or preparation of response to the Freedom of Information Act ("FOIA") requests made the basis of this suit. 2. I do not maintain documents responsive to the FOIA requests made the basis of this suit, nor at the time of the FOIA requests did I maintain any such documents.[190]

In reviewing this declaration, U.S. District Court Judge Royce C. Lamberth remarked about its obviously careful wording:

> Well, unfortunately, the Secretary died before his deposition, but that statement from the Secretary raises more questions than it answers. . . . He didn't say there were no such documents or that he never had any such documents . . . which would have been the logical thing to say. . . .[191]

Ms. Hill would later testify that, not only did Secretary Brown maintain responsive documents in his office, but he even showed her clearly responsive documents on Clinton Commerce Department letterhead, under Melissa Moss' signature, which he kept in an ostrich skin portfolio.[192] These documents have never been produced to Judicial Watch despite Ms. Hill's advice to Secretary Brown that they be produced immediately,[193] and were likely destroyed after Secretary Brown's death.[194]

Ms. Hill also later testified that Secretary Brown told her that his declaration was purposely misleading:

A: He felt like the wording was truthful, but it was crafted very carefully.
Q: How was it crafted very carefully?
A: The words "in determining." He felt like he could truthfully say that he didn't determine the scope of the search.
Q: Why was that important?
A: I don't think I understand.

Q: In other words, he didn't want to be part - he didn't want to be implicated in the aspect of actually searching? He didn't want to have to swear to that; correct?
A: That's right.
Q: Because of the sensitive nature of some documents, showing the involvement of the White House in selling trade missions?
A: He just didn't want to be involved.
Q: Dealing with the White House, the sale of trade missions; correct?
A: He didn't want to be involved with the FOIA issue.
Q: Because of the legal ramifications; correct?
A: He was under investigation by independent counsel.
Q: So the answer is yes?
A: Yes.(195)

Secretary Brown carefully crafted a misleading affidavit to the Court and unlawfully withheld responsive documents. He personally showed Ms. Hill "smoking gun" Commerce Department documents under Melissa Moss' signature detailing the sale of the taxpayer-financed trade mission seats for political contributions to the DNC.(196) He obviously complied with his orders from the White House, and in doing so obstructed justice.

In addition, the Clinton Commerce Department touted Anthony Das, the Executive Secretary in the Executive Secretariat of the Office of the Secretary of Commerce, as the person charged with overseeing the search for and production of documents responsive to Judicial Watch's FOIA request. In a sworn declaration dated March 10, 1995, Mr. Das testified that, as Executive Secretary, he had "been delegated authority to initially respond to the requests for records of the Executive Secretariat," and that, upon receipt of such a request, it was the job of the Executive Secretariat to "direct[] all other Department offices which might have responsive records to conduct searches for records."(197)

Contrary to his sworn declaration, at his March 27, 1996 and October 9, 1996 depositions, Das made it clear that his role in the search for responsive documents was minimal, if not non-existent. First, Das testified that he never reviewed Judicial Watch's FOIA requests.(198) Das also testified that he never discussed the document search with Secretary Brown, although he had frequent contact with him.(199) He also testified that he didn't know of anyone searching Secretary Brown's office.(200) Upon reviewing these obvious inconsistencies between Das' declaration and his deposition testimony, the Court asked Clinton Justice Department counsel:

> Don't you think it's rather curious that you would file with me an affidavit from Das saying the Secretary had no records and then admit in his deposition he never asked the secretary?(201)

Clinton Justice Department lawyer, Assistant U.S. Attorney Bruce Hegyi, responded that Das somehow knew Brown did not keep records in his office.. Thirty-eight (38) subsequent depositions showed no one asked about or searched Secretary Brown's office for responsive documents.

Additional evidence of false, sworn declarations arose when Judicial Watch deposed Mary Ann McFate, Director of the Office of Organization and Management Support at the Commerce Department's International Trade Administration ("ITA"). Ms. McFate submitted no less than eight (8) sworn declarations claiming responsibility for the search for and production of responsive documents *throughout* the Clinton Commerce Department.(202) However, at her October 15, 1996 deposition, Ms. McFate testified that her search for documents was limited solely to the ITA, although the ITA was clearly not the only branch of the Clinton Commerce Department possessing responsive documents.(203) Ms. McFate also testified at her deposition that she was not involved in searching any other bureaus or offices of the Clinton Commerce Department.(204) Accordingly, the declarations of Ms. McFate, submitted by the Clinton Commerce Department's Office of General Counsel, were clearly false and misleading.(205)

B. Destruction of Evidence

The letters Ms. Hill reviewed, which detailed the unlawful sale of seats on Commerce Department trade missions in exchange for campaign contributions, were never turned over to Judicial Watch or the Court.(206) This alone constitutes evidence of obstruction of justice. In addition, however, Ms. Hill testified that Secretary Brown kept documents in his office that were responsive to Judicial Watch's FOIA request and which the Court had ordered to be produced:

A: I became aware that [late Commerce Secretary Ron Brown] kept documents related to this [Judicial Watch FOIA] lawsuit. He had some in his office. . . .

Q:And what types of documents were they?

A: The ones that I know about were documents relating to Commerce Department activities that had been subpoenaed.

Q: And ordered by the Court to be produced?

A: Yes, sir.(207)

Depositions taken by Judicial Watch revealed the likely fate of these and other likely responsive documents that were never produced to Judicial Watch.

Although Judicial Watch's lawsuit seeking production of documents concerning trade missions was pending, and although the Clinton Commerce Department was under a Court order to produce all responsive documents, several witnesses testified about the wholesale shredding of documents in the Office of the Secretary after Brown's death. In a sworn affidavit volunteered by Mr. Robert Adkins, a former Commerce Department employee who worked with Clinton fundraiser and Commerce Department appointee John Huang, Mr. Adkins testified that there was so much shredding of Clinton White House and DNC documents at the Clinton Commerce Department that the shredder broke. "Among the documents which I personally saw shredded," Adkins said, "were . . . documents bearing the logo of the Executive Office of the President as well as documents bearing the logo of the Democratic National Committee."(208)

Ms. Barbara Schmitz and Ms. Melanie Long, Secretary Brown's "Executive Assistant" and "Special Assistant," respectively, both testified at their depositions that documents from Secretary Brown's office were shredded after his death.(209) Ms. Dalia Traynham, who was in charge of scheduling for Secretary Brown, testified at her deposition that she had been assigned the task of shredding documents after Secretary Brown's death, even though she previously had never been asked to shred documents.(210) In fact, during an October 18, 1996 hearing, the Clinton Commerce Department was forced to admit that documents from Secretary Brown's office were shredded without determining whether any of them were responsive to Judicial Watch's FOIA request.(211) In light of the pendency of Judicial Watch's lawsuit and the existence of a Court order requiring production of all responsive documents, this massive shredding of documents in Secretary Brown's office after his death constitutes clear evidence of obstruction of justice.

Judicial Watch uncovered further evidence of obstruction of justice as well. In the more than thirty-nine (39) plus depositions taken by Judicial Watch thus far in this case, curiously few individuals in the Clinton Commerce Department admit to having taken any notes concerning trade missions and other relevant and important matters. No one admits to having seen Secretary Brown ever taking any notes.(212) Few notes were ever produced to Judicial Watch in response to its FOIA requests. Ms. Melinda Yee, one of the few witnesses who admitted to having taken notes(213)—who was, in fact, the designated "note-taker" for the trade missions to China and India—admitted that she destroyed her notes from the very important China trade mission.(214)

Yee held several positions in the Clinton Commerce Department, including Director of Policy Development Programs at the ITA, and Senior Adviser to the Chief of Staff. Yee also has been a very important figure in Democratic fundraising activities and was a close confidante of John Huang.(215) Yee also once described herself as a close friend of the Riady family, which, through the Lippo Group, employed Huang before he was appointed to the Clinton Commerce Department.(216)

Yee went on several Clinton Commerce Department trade missions, including one to China in 1994 in which key Commerce Department officials Ira Sockowitz, Ginger Lew, and Jude Kearney also participated.(217) It was on this 1994 trade mission to China that the Clinton Commerce Department advocated a joint-venture project between Entergy Corporation (a large Clinton donor), the Lippo Group (another large Clinton donor), and a Chinese Government-owned electric power company.(218) Campaign fundraising scandal figures Bernard Schwartz, Charlie Trie, Johnny Chung, and Tricia Lum also participated in this trade mission.

Importantly, at her deposition, Yee admitted to having taken notes on the China and India trade missions, and other matters.(219) It has also been reported in the press that Yee served as the designated note-taker on these key trade missions. Although Yee appears to be one of the few persons in the Clinton Commerce Department who admitted to having kept notes about the trade missions, at her deposition she was also forced to admit having destroyed these notes, along with other documents.(220)

Not only were these documents responsive to Judicial Watch's FOIA requests—which had been pending for a substantial period of time when Yee is said to have destroyed them—the federal Court had specifically ordered that the documents be produced.[221] Although Yee claims that she was never informed of Judicial Watch's FOIA requests or the Court's orders[222]—a claim which is not believable given the substantial publicity surrounding Judicial Watch's case and her constructive notice of Court orders given her positions at Commerce—she reportedly contacted one of her lawyers, John Tisdale, who is also a law partner of Deputy White House Counsel Bruce Lindsey, one of the President's closest confidantes, around the same time she says she destroyed her notes.[223] Tellingly, she also said that she was instructed by her attorney not to answer questions about this odd contact with the Lindsey firm at the time of her deposition.[224] Given the clear importance of these documents to this case, as well as to the campaign finance and Chinagate scandal as a whole, their destruction exemplifies clear evidence of obstruction of justice.

C. Concealment of Evidence

Judicial Watch's depositions yielded further evidence of obstruction of justice—in the form of concealment of evidence. The existence of key documents—never produced to Judicial Watch and the Court—only became known when witnesses testified about them at deposition. Other key documents were only produced to Judicial Watch when the group learned about them during the discovery process.

Emblematic of the efforts to "slow-pedal," if not prevent, the production of documents to Judicial Watch, was the deposition of Lesia Thornton, the FOIA officer assigned to the Office of the Secretary at the time of the Judicial Watch FOIA request. At her deposition, Ms. Thornton produced detailed, typed notes—some of which contain multiple entries per day—that she personally kept concerning her involvement in the response to Judicial Watch's FOIA requests.[225] Ms. Thornton's notes describe a complete lack of cooperation from Office of Business Liaison Director Melissa Moss, the former DNC fundraiser whose letters detailing the Clinton Commerce Department's sale of seats on taxpayer-financed trade mission were reviewed by Ms. Hill, but never produced to Judicial Watch. Ms. Thornton's notes state that Moss, who had worked intimately with Secretary Brown on selecting participants for the trade missions, "made it more than obvious that she just didn't want to do the [FOIA] request. She said her office has more important things to do."[226] Ms. Thornton was distressed and frustrated by this conduct: "I have made every effort humanly possible to obtain these documents, however I still do not have them." Ms. Thornton also noted: "When we were leaving Melissa's office she made the comment that 'we are going to try to get this done since [Larry Klayman of Judicial Watch] is threatening to sue'—Judith [Clinton Commerce Department Counsel Judith Means] then said, 'If he sues; he sues.'"[227]

Ms. Thornton's personal notes also make reference to John Ost, who had worked with Melissa Moss in the Office of Business Liaison. At Mr. Ost's deposition, Judicial Watch learned that he received a facsimile from the DNC listing companies that the DNC was recommending for participation in the trade missions.[228] Mr. Ost testified that he turned this document over to his supervisors to be produced to Judicial Watch.[229] The document, which would have provided further corroboration that trade missions seats were being sold illegally, was never produced to Judicial Watch.

Another key document, the DNC "Minority Donor's List" found in the files of the Clinton Commerce Department, was produced two years late and only after being "uncovered" by Judicial Watch during a deposition.[230] At his May 27, 1998 deposition, Graham Whatley, an assistant to Deputy Assistant Secretary Jude Kearney at the Clinton Commerce Department, revealed that Kearny kept a list of 139 minority donors in his files.[231] Importantly, it was Kearney who selected the participants for Secretary Brown's trade missions.[232] At least five (5) of these donors participated in a trade mission to South Africa with Secretary Brown.[233]

Morever, at her deposition Ms. Traynham also testified that her office prepared schedules for Secretary Brown, which included meetings held in Washington to prepare for various trade missions. She also testified that these schedules listed the meetings' participants, and indicated the subjects to be discussed. Traynham further testified that back-up copies of these schedules were stored on computer.[234] As with other key documents and records, the existence of these materials was also concealed from Judicial Watch. Prior to Traynham's deposition, Judicial Watch had not received and was given no information about records reflecting Secretary Brown's schedules. Although these schedules contained information responsive to Judicial Watch's FOIA requests, no such schedules were ever produced to Judicial Watch.

Another top official at the Commerce Department, former Deputy Undersecretary David Rothkopf, took a large stack of documents with him when he left the Depart-

ment to join Kissinger & Associates. The Court remarked on June 27, 1997 that this was a particularly "unique" way of defeating FOIA regulations.[235]

In response to a deposition subpoena from Judicial Watch, Rothkopf testified that he handed over some documents to the Clinton Justice Department without reviewing them.[236] Without knowing what documents were allegedly given to the Clinton Justice Department, Judicial Watch has been unable to confirm either that the documents were returned to the Commerce Department, or that they were produced to Judicial Watch pursuant to Court orders.

D. Perjury

In addition to the perjury committed by Secretary Brown and others in the submission of false declarations to the Court, a host of other Clinton Administration witnesses perjured themselves under oath.

Prominent among these is Melissa Moss, the key Clinton fundraiser at the Commerce Department. Moss falsely testified at her October 10, 1996 deposition that fundraising was not a factor in selecting participants for Commerce Department trade missions, and that she did not conduct fundraising out of the Commerce Department for the DNC.[237] Ms. Hill reviewed Moss's videotaped deposition testimony and swore in her affidavit that Moss did not tell "the truth in response [to] a number of questions concerning Commerce Department trade missions, as well as other representations she has made under oath."[238] In addition to having seen letters on Commerce Department stationary under Moss' signature concerning the sale of seats on Commerce Department trade missions,[239] Ms. Hill testified:

> Q: Okay. Now, Melissa Moss worked with the White House, based on your discussions with Ron, over the trade missions; correct?
>
> A: Yes.
>
> Q: So when she says that trade missions weren't a factor in terms of getting campaign contributions, that's false, isn't it?
>
> A: Yes.
>
> Q: When she says that she was not engaging in fundraising, based upon what you know, having seen those documents, that's false isn't it?
>
> A: Yes, sir.
>
> Q: And when she says that she didn't know of criteria to choose trade mission participants other than the ones she listed, which she claimed were based on economic considerations, that's false, isn't it?
>
> A: Yes, sir.[240]

Further evidence of Moss' illegal fundraising activities on behalf of the DNC and the President's re-election campaign[241] came from the files of the Clinton Commerce Department. A series of letters from prospective and actual trade mission participants, and internal memoranda from top Commerce officials show that political contributions were indeed a factor.[242] On April 8, 1994, businessman Ko Saribekian, a participant in the Clinton Commerce Department trade mission to Russia, wrote Secretary Brown to thank him. Obviously referring to the expected political contributions, Saribekian wrote:

> Again I thank you and your exceptional team for the opportunity to participate and I look forward to repaying the generosity of Department of Commerce in some way in the months ahead. Melissa and I are keeping in touch about the latter.[243]

It thus seems quite clear that Moss was using the Commerce Department trade missions for political fundraising to benefit President Clinton. It also seems quite clear that Moss continuously lied about this activity and worked to cover it up.

It is also beyond dispute that John Huang, the DNC fundraiser and Commerce official now believed by many to be an intelligence agent for the Chinese Government,[244] also perjured himself at his October 29, 1996 deposition. Before moving to the DNC, Huang was Deputy Assistant Secretary for International Economic Policy at the Clinton Commerce Department. At his October 29, 1996 deposition, Huang testified that he was, in effect, little more than a "budget clerk" at the Clinton Commerce Department.[245] Subsequent revelations indicate he was much more. In fact, it is now clear that Huang participated in the planning of Clinton Commerce Department trade missions,[246] and had extensive telephone contacts with Asian and American business people, diplomats and lawyers, many of whom, such as Webster Hubbell and Joe Giroir, had ties to Huang's former employer, the Lippo Group.[247] Huang also participated in numerous departmental meetings concerning Asia policy,[248] and even received frequent intelligence briefings.[249] These revelations indicate Huang was not "walled-off" while at the Clinton Commerce Department, contrary to the obviously false, public testimony of former Commerce Official

Jeffrey Garten before Senator Fred Thompson's Government Affairs Committee, which investigated some of the various fundraising issues arising from the 1996 federal elections.

In addition, at his deposition Huang testified that he kept virtually no records at the Clinton Commerce Department.(250) Although he was under subpoena, Huang produced no documents at his deposition.(251) He stated that his notes were thrown away, his reports were destroyed, his computer files were erased and copies of his correspondence were not kept.(252) However, subsequent news reports, including a report in the December 30, 1996 edition of *The New York Times,* portray Huang as a "pack rat" who left the Clinton Commerce Department with and kept "bulging files."(253) Moreover, at the March 19, 1997 deposition of Huang's secretary, Ms. Janice Stewart, she admitted that Huang kept detailed desk diaries that documented his activities at the Clinton Commerce Department day-by-day and hour-by-hour.(254) No desk diaries were produced to Judicial Watch until Ms. Stewart made them known more than two (2) years after Judicial Watch's FOIA requests. When copies of these desk calendars were eventually produced to Judicial Watch, they were illegible in many places and therefore essentially useless. Indeed, to this day, the Public Integrity Section of the Clinton Justice Department, which maintains the originals of Huang's diaries, has refused to produce them for inspection and copying, despite a Court subpoena requiring their production.(255)

E. Intimidation and Tampering With Witnesses and Investigators

As it has done to contain its numerous other scandals, the Clinton Administration went to extreme lengths to cover-up the sale of the taxpayer-financed trade mission seats for campaign contributions, even attempting to intimidate and retaliate against witnesses and Judicial Watch itself.

Foremost among these apparent efforts was the indictment of Ms. Hill on fraud and tax evasion charges only a week before she was to testify at the March 23, 1998 evidentiary hearing.(256) When Judicial Watch uncovered Ms. Hill and obtained an affidavit from her in January 1998, the affidavit was presented to the Court. In her affidavit, Ms. Hill testified that she feared retaliation from the Clinton Administration:

> I would like to come forward and tell this court everything I know about the failure to produce documents to Judicial Watch and this court. I am concerned, however, that if I do so, the Clinton Administration, and more particularly its Justice Department, will try to retaliate against me. As a result, I look to this court for guidance on how I can come forward and tell all I know in the interest of justice.(257)

Consequently, on February 4, 1998, the Court ordered Ms. Hill's affidavit be kept under seal, specifically because Ms. Hill was concerned about retaliation.(258) Judicial Watch lawyers argued as well that the affidavit should not be provided to Main Justice by the Office of the U.S. Attorney for the District of Columbia, which was representing the Clinton Commerce Department. On February 13, 1998, Ms. Hill agreed to testify at an evidentiary hearing before the Court on March 23, 1998.(259) After learning about this scheduled hearing, Assistant U.S. Attorney Bruce Hegyi, who represented the Clinton Commerce Department in this matter and already had been sanctioned for other misconduct apparently provided this information and a copy of Ms. Hill's affidavit to "Main" Justice, despite the fact that the information was under seal. When Judicial Watch later raised this issue before the Court, Hegyi did not deny it.

Between March 10, 1998 and March 13, 1998, Ms. Hill's legal counsel, Christopher Todd, who also represents President Clinton's private detective Terry Lenzner, and, apparently, Webster Hubbell's accountant, was reportedly told by Deputy Attorney General Eric Holder and Mary Spearing, Chief of the Fraud Section of the Criminal Division of the Clinton Justice Department, or others at "Main" Justice, that "[Holder] is not pleased by Ms. Hill's involvement with Judicial Watch, and her coming forward in this case."(260) According to Todd, Holder also told him that Ms. Hill is "*persona non grata* at the Justice Department."(261) On March 14, 1998, Ms. Hill was indicted on tax charges,(262) obviously in an attempt to retaliate against her and/or short-circuit her testimony at the upcoming March 23, 1998 evidentiary hearing by forcing her to invoke her Fifth Amendment rights against self-incrimination. Fortunately, however, the Court ordered Ms. Hill to testify in a manner which would not implicate her Fifth Amendment rights.

Tellingly, before her indictment, Ms. Hill had not been formally notified that she was under investigation, which is highly unusual whenever indictments are issued. Furthermore, at Ms. Hill's arraignment, the Clinton Justice Department admitted that they had not had time to prepare an inventory of evidence against Ms. Hill,

indicating that the charges were hurriedly prepared.(263) And, after Ms. Hill testified at the March 23, 1998 evidentiary hearing, the Clinton Justice Department re-indicted her, purportedly to correct typographical errors in the original indictment. Clearly, this re-indictment was nothing more than another warning against further cooperation with Judicial Watch and the Court.

Clinton Commerce Department personnel were also subjected to intimidation and retaliation. Graham Whatley, the career civil servant who revealed the existence of the DNC "Minority Donors List" in the files of top Commerce official Jude Kearney, was promptly fired by the Clinton Administration after his deposition.(264)

Ms. Christine Sopko served as Kearney's secretary. Ms. Sopko testified that she had turned over the DNC "Minority Donors List" to Clinton Commerce Department and Clinton Justice Department lawyers at least three (3) months before Mr. Whatley's deposition. Sopko, a non-political career employee, broke down in tears as she testified about being afraid of losing her job.(265) She also testified that she believed Whatley had been fired for revealing the existence of this DNC document.(266)

An attempt was even made to intimidate and coerce Judicial Watch's General Counsel, Larry Klayman, into agreeing to a settlement of the case, in an obvious attempt to cover-up the scandal. In April 1997, Judicial Watch was the first to depose Mr. John Dickerson, the CIA officer who regularly briefed John Huang at the Commerce Department. Because of the potentially sensitive nature of the deposition, it was to take place at the federal courthouse in Washington, DC rather than at Judicial Watch's offices. However, the Clinton Administration made no efforts to conceal Dickerson from the public. (*Indeed, it had already lifted his "cover."*) Dickerson, AUSA Hegyi and other CIA, Clinton Justice Department and Clinton Commerce Department personnel used public entrances and exits to the Courthouse, and had lunch together in the Courthouse's public cafeteria, where members of the press frequently congregate. The Clinton Administration later claimed that Dickerson was videotaped by a news crew as he left an admittedly public exit from the Courthouse later that day.

Apparently upon returning to his office, AUSA Hegyi and his supervisor, Deputy Chief John Oliver Birch, telephoned Mr. Klayman's office. In grave, menacing tones, they informed Mr. Klayman about what had allegedly transpired, alleging that he had blown the cover of a CIA operative, and then placed a call to the Court. After this initial conversation with the Court, Mr. Klayman called the Court and offered to make himself available for an immediate *in camera* conference in order to support any steps necessary to remedy the alleged videotaping. During the ensuing conference on the evening of April 4, 1997, Mr. Klayman advised the Court of a routine press inquiry about when and where the Dickerson deposition would take place:

> I was asked by the press, in response to their knowledge that I was taking Mr. Dickerson's deposition, whether they could have a copy of the video. And I said no; that its going to be transcribed and that Your Honor would have to have an opportunity to review it, and only then would it be releasable. . . . I did tell them that it was being held in camera at the courtroom. . . .(267)

Mr. Klayman also stated that it was not his understanding that information about the date and place of the deposition had been sealed by the Court, and that he would support any effort by the Clinton Administration, through the Court, to obtain the alleged videotape of Dickerson:

> . . . But technically speaking . . . Your Honor did not seal or order confidential where it was taking place or the date. And I am here to try to facilitate anything that I can do to help in this matter, not here to cover my own rear end, for lack of a better word on the court record, because I feel strongly about this as everybody else.(268)

In what was clearly a threat of criminal prosecution, Deputy Chief Birch responded by invoking the Specter of the "Pentagon Papers" case, adding pointedly:

> . . . [I]t may be that it would be appropriate for me to relate to the Court the position of the United States Attorney's Office, what we perceive to be our options right now for purposes of both the Court *and for purposes of unilaterally, the Government.*(269)

(Emphasis added). The Court adjourned the conference without taking any further action.(270)

Immediately upon leaving the conference room, AUSA Hegyi and Deputy Chief Birch approached Mr. Klayman and another Judicial Watch attorney who had attended both the Dickerson deposition and the April 4, 1997 hearing. In what can only be viewed as a coercive attempt to force settlement, he asked whether Judicial

Watch would now agree to submit the case to a "settlement judge" (*i.e.,* a judge other than Judge Lamberth). On April 7, 1997, Judicial Watch filed a pleading with the Court to record these same events.(271) This improper attempt to coerce a settlement from Judicial Watch constitutes a clear violation of Rule 8.4(g) of the District of Columbia Rules of Professional Conduct, which prevents the threat of criminal charges to gain an advantage in civil litigation.(272) In addition, it also constitutes a clear abuse of power by the Clinton Administration. Later, the Clinton Administration filed pleadings to have Mr. Klayman held in criminal contempt, and then criminally prosecuted. The Court summarily denied the request.(273)

Even Secretary Ron Brown was fearful of crossing the Clinton White House. Ms. Hill testified that one of the reasons Secretary Brown did not want to turn over incriminating documents to Judicial Watch was because he needed the support of the Clinton White House as he faced his own Independent Counsel investigation:

> A: [Secretary Brown] was concerned about the independent counsel investigation that he was under, and the potential for how he was going to—not the potential, but the catch 22, because he didn't want to be put in the position that he was in, of appearing to be non-responsive, while at the same time he felt the support of the White House during the pendency of the independent counsel investigation.
>
> Q: So he was concerned that he needed the support on the independent counsel side, and the White House needed his support with regard to the sale of trade missions and exposing that; correct?
>
> A: (No response.)
>
> Q: In other words, he was between a rock and a hard place. He didn't want to have to turn the White House in for selling trade missions?
>
> A: He didn't want to do anything that would rock the boat.
>
> Q: So the answer is yes?
>
> A: I think the answer is what I said. He didn't want to do anything that would rock the boat—
>
> Q: With the White House?
>
> A:—with the White House.
>
> Q: With the White House?
>
> A: Yes.(274)

Indeed, it was about his own independent counsel investigation, and the "catch-22" he was in over the illegal sale of seats on Commerce Department trade missions and cover-up, that he went to see President Clinton shortly before he was killed.(275)

F. Misconduct By Clinton Commerce Department Counsel

In addition to false declarations, destruction of evidence, concealment of evidence, perjury and attempted intimidation of and retaliation against key witnesses, and even Judicial Watch itself, the Clinton Administration has misused government lawyers to cover-up its unlawful conduct. It is very important to understand the obstructionist role lawyers in the Clinton Commerce Department's Office of General Counsel ("OGC") played in impeding the flow of Judicial Watch's investigation, and in thwarting the Court's orders—conduct which is contrary to their obligations as public servants, and contrary to their obligations as officers of the Court and members of the bar.

Several key lawyers for the Clinton Commerce Department admitted to playing significant roles in "responding" to Judicial Watch's FOIA requests. These lawyers include: Barbara Fredericks, Judith Means and Elise Packard. All were deposed by Judicial Watch in early 1997. The depositions of these OGC lawyers demonstrate that they: (1) gave advice on responding to Judicial Watch's FOIA requests; (2) examined documents; (3) prepared the Clinton Commerce Department's *Vaughn* indexes, which contained numerous, spurious claims of exemption and attorney-client privilege; (4) prepared sworn declarations submitted to the Court; (5) prepared witnesses for deposition; and (6) attended depositions In this case, often disrupting the process.(276)

Importantly, in her January 18, 1998 affidavit and at the March 23, 1998 evidentiary hearing, Ms. Hill testified that Barbara Fredericks helped to draft the false and misleading declaration of Secretary Brown.(277) The declaration Fredericks helped to draft was carefully worded to avoid Secretary Brown having to acknowledge any involvement in the search for documents responsive to Judicial Watch's FOIA requests.(278) It also falsely asserted that Secretary Brown did not "maintain documents responsive to the FOIA requests made the basis of [Judicial Watch's] suit, nor at the time of the FOIA requests did [Secretary Brown] maintain any such documents."(279) In fact, Ms. Hill testified that not only did Secretary Brown maintain documents responsive to Judicial Watch's FOIA requests in his office, he had

even showed her responsive documents on Commerce Department letterhead and under Melissa Moss' signature that he kept in an ostrich skin portfolio.(280)

The evidence also reveals that Judith Means was intimately involved in providing the Clinton Commerce Department's response to Judicial Watch's FOIA requests.(281) Means testified that she met with John Ost and his supervisor to answer questions about withholding documents responsive to Judicial Watch's FOIA requests under claim of exemption.(282) Ost would later testify that he provided his supervisor with a facsimile from the DNC to the Commerce Department listing companies that the DNC was recommending for participation in trade missions.(283) In addition, Means also testified that she met with Melissa Moss, who had signed the letters Secretary Brown showed to Ms. Hill concerning the sale of seats on trade missions.(284) However, at her deposition, Means failed to produce her notes of these meetings.(285) Neither the facsimile from the DNC Ost provided to his supervisor nor the Moss' letters have ever been provided to Judicial Watch.(286) Obviously, Means' notes of her meetings with Ost, Ost's supervisor and Moss might shed light on the disappearance of these crucial pieces of evidence.

The testimony in Judicial Watch's case also shows that OGC lawyers knew about the DNC "Minority Donors List" long before its existence was revealed by Graham Whatley.(287) Indeed, Christine Sopko testified that she turned over this list of 139 contributors to the DNC to her superiors months earlier.(288) A number of donors on the list, which included bankers, union officials, and corporate executives, attended a trade mission to South Africa with Secretary Brown in November 1993. The list thus constitutes further *primo facie* evidence that the Clinton Commerce Department was doing political fundraising by selling seats on the taxpayer-financed trade missions. OGC lawyers also reviewed the now-missing documents previously maintained in Secretary Brown's office.(289)

When confronted with evidence of obstruction and unlawful conduct by Commerce Department officials—such as the shredding of documents in Secretary Brown's office,(290) the destruction of documents by Melinda Yee,(291) and the removal of classified, national security documents by Ira Sockowitz(292)-Clinton Commerce Department lawyers testified that, in effect, they did nothing.

The issue of the adequacy of the Clinton Commerce Department's search for computer files has also assumed a central role in this case. Court orders dated December 6, 1996 and February 13, 1997 charged the Clinton Commerce Department's OGC with the specific responsibility of searching for and producing computer files responsive to Judicial Watch's FOIA requests. Yet, OGC not only failed in its responsibilities to supervise the search for responsive computer files throughout the agency,(293) it also failed to search even its own computers, even though the existence and location of these records was well known.(294)

As General Counsel to the Clinton Commerce Department, Ginger Lew was the ultimate supervisor of all the attorneys who participated in the Department's response to Judicial Watch's FOIA requests. She was also a confidante of John Huang and very active in Asian–American politics. Lew later left the Clinton Commerce Department to become Deputy Administrator of the Small Business Administration ("SBA") under Erskine Bowles, who is now White House Chief of Staff. Lew was instrumental in having her special assistant at OGC, Ira Sockowitz, join her at the SBA.(295)

Like John Huang before her, Lew went to great lengths to avoid being deposed, and to avoid producing subpoenaed documents. She and her counsel initially sought to avoid service of a subpoena, then attempted to "voluntarily" appear for the deposition at Judicial Watch's offices so as to avoid having to produce documents. The gamesmanship then escalated.

When Judicial Watch was forced to postpone Lew's deposition because of the evasive tactics it had encountered in attempting to serve its deposition subpoena, Lew's counsel and counsel for the Clinton Justice Department then conducted an unauthorized and essentially unlawful deposition of Lew and a court reporter to elicit false and misleading testimony. The Court would later rebuke counsel for Lew and the Clinton Justice Department saying, "[W]hat you're just giving him and waiving around today is a purported transcript of a deposition that is totally unauthorized."(296) The Court also rebuked Ms. Lew for refusing to accept Judicial Watch's subpoena:

> Why would a person like Ms. Lew, who is a lawyer, not just say to her lawyer, "Accept the subpoena. Don't go play all these games and have people chasing all over town looking for me to serve me?" Why would a lawyer do that? I don't understand that.(297)

Ultimately, Judicial Watch was able to at least begin its deposition of Lew on March 12, 1997. This deposition demonstrates that Lew is an astute political opera-

tive.[298] It is also clear from her demeanor during the deposition that Lew was not being candid. She has still failed to produce the requested documents, and, in the middle of the deposition, she, the Clinton Justice Department counsel, and Lew's counsel all arbitrarily walked out of the court proceeding, without authorization from the Court. The obstruction Lew committed and condoned further substantiates and corroborates the other evidence and testimony that there was a desperate effort on the part of Secretary Brown, under orders and pressure from the President's top political aides, to cover-up the fact that taxpayer-financed trade missions were being used as a fundraising tool for President Clinton's re-election, and other political needs. It is important to remember that Lew was the Clinton Administration's lead lawyer at Commerce.

The testimony of these lawyers also shows that they directly obstructed the public's right to know about the operations of its government pursuant to FOIA. Incredibly, OGC lawyers directly obstructed court processes by participating in the drafting of false declarations, the misapplication—with an error rate found by the Court of least fifty percent (50%)—of exemptions from disclosure under FOIA,[299] the invocation of spurious claims of attorney-client privilege, and the failure to disclose documents in their custody or control (*e.g.*, the "Minority Donors List"). None of them felt a duty to investigate acts of wrongdoing by others in the Clinton Commerce Department, such as the destruction by Melinda Yee of her notes and other documents, the removal of classified documents by Ira Sockowitz, and the disappearance of documents from Secretary Brown's office. In fact, according to them, they did not even have an obligation to report this evidence of obstruction of justice to the Clinton Commerce Department's Inspector General, the Department of Justice, or the Court.

In light of the role of attorneys to uphold the law, the conduct of OGC lawyers has been most troubling. While one OGC attorney, Gordon Fields, acknowledged that government lawyers have an obligation to the American people and not just the Administration or department which they serve,[300] the conduct of the OGC lawyers in this matter demonstrates anything but such an obligation. In fact, the conduct of the OGC lawyers in this matter, obviously under orders from supervisors acting on behalf of the Clinton Administration, amount to obstruction of justice.

G. Clinton Justice Department Complicity

This is the Justice Department. And so I cannot imagine a more seriously jeopardizing situation for Ms. Hill to be in at this point in time.

Stephen Charles, Ms. Hill's lawyer, just prior to her court testimony on March 23, 1998.[301]

Throughout this case, it has not only been the Clinton Commerce Department and its lawyers that have attempted to thwart Judicial Watch's efforts to obtain documents responsive to its FOIA requests. The Clinton Commerce Department has enjoyed the apparent approval and complicity of the Clinton Justice Department as well.

For example, in a February 24, 1997 article asking "How Honest Is Justice's Probe?" *Investor's Business Daily* noted that the Clinton Justice Department is defending some of the very same Clinton Commerce Department officials it is supposedly investigating for illegal fundraising.[302] Deputy Attorney General Eric Holder, who admittedly owed his former position as U.S. Attorney for the District of Columbia in part to Secretary Brown, who admittedly recommended him,[303] and who obviously owes his current position to President Clinton,[304] publicly announced on NBC's *Meet the Press* that he was "intimately involved" in the Chinagate probe.[305] In early 1997, however, Holder tried to shut down Judicial Watch's lawsuit. "[This lawsuit] is not about whether in fact Secretary Brown 'sold seats on trade missions to big contributors to the Democratic Party' . . .," Holder wrote in filing a motion with the Court.[306] Holder's inherent conflict-of-interest only adds to the already substantial conflict-of-interest of the Clinton Justice Department.

The end result has been the lack of any serious investigation by the Clinton Justice Department.[307] While Attorney General Janet Reno claims to be conducting an investigation of the campaign finance scandal that will leave "no stone . . . unturned,"[308] depositions taken in this case demonstrate the contrary. About a year after the scandal exploded, in the summer of 1997, discovery confirmed that neither the Clinton Justice Department nor the FBI had called one Clinton Commerce Department official before the grand jury. Not even Huang's secretary, Janice Stewart, had been interviewed by the Clinton Justice Department or the FBI.[309] Likewise, Ginger Lew, the supervisor of Ira Sockowitz at both the Clinton Commerce Department and the SBA, had not been interviewed either.[310] Nor have many others.[311]

In addition to the telling lack of any meaningful investigation by the obviously conflicted Clinton Justice Department, the conduct of Clinton Justice Department lawyers in Judicial Watch's case has been marked by a pattern of litigation misconduct and abuse, including outright suppression of evidence. For example, Clinton Justice Department counsel unilaterally terminated the depositions of Anthony Das and Ginger Lew. With regard to the Das deposition, the Court had granted Judicial Watch the right to subpoena documents from Das prior to his being deposed.(312) Yet, when Das appeared for his deposition, he produced no documents. Bruce Hegyi, the Clinton Justice Department lawyer defending the deposition, unilaterally declared that Das had no obligation to produce the subpoenaed documents, then Das, Hegyi and the OGC lawyers attending the deposition walked out!(313) The Court ultimately issued sanctions for this outrageous misconduct.(314) Similarly, after engaging in substantial "gamesmanship" prior to her actual deposition, Lew also failed to produce subpoenaed documents when she was finally deposed. Then, in the middle of the deposition, she, Hegyi, OGC counsel and Lew's counsel all arbitrarily walked out again, without any authorization from the Court. Motions are pending before the Court to sanction this additional misconduct at Lew's deposition.(315)

In addition, the Court has repeatedly criticized Clinton Justice Department counsel for improper use of "speaking objections" during depositions, which have had the obviously intended effect of tipping-off witnesses about how to respond to Judicial Watch's questioning. This grossly improper misconduct has been repeated in deposition after deposition.(316) During a June 27, 1997 hearing, the Court, responding to the Clinton Justice Department's rationalizations for its improper conduct, went to the heart of the matter:

> [T]he one thing that just leaps out at me is that in a case in which the government is being accused of [a] cover-up, and, in which I have suggested that government counsel should take certain actions not to suggest answers to witnesses, I don't understand this whole approach that you continue to take in your brief about, "Well, we can always try to clarify ambiguous questions, and, therefore . . ." I mean, you're going to be constantly accused of tipping off witnesses and suggesting answers to witnesses by putting your head in the sand with that kind of approach. That's why I said to the government that you need to reexamine your approach. I just don't understand it."(317)

Clinton Justice Department counsel was admonished again for using these blatantly obstructionist tactics during a number of depositions.(318)

The Clinton Justice Department also has made repeated, material misrepresentations of fact. To cite just a few of the more significant examples, when Judicial Watch took the deposition of John Dickerson, who briefed John Huang on intelligence matters, the Clinton Justice Department represented that Huang had received 37 intelligence briefings. However, it was later reported in the press that Huang actually had received as many as 109 briefings.(319)

Likewise, the Clinton Justice Department represented that the office of Melinda Yee—the official note-taker on Commerce Department trade missions who later admitted to having destroyed all of her notes despite the fact that the Court had ordered them to be produced to Judicial Watch—was searched by Dawn Evans Cromer, Carola McGiffert and Beth Bergere.(320) When Judicial Watch deposed these individuals, however, it became clear that they had never been assigned to conduct any such search, had not conducted any such search, and did not even know that their names had been given to the Court as the individuals who conducted a search of Ms. Yee's office.(321)

Moreover, the Clinton Commerce and Justice Departments also were involved in suppressing the crucial DNC "Minority Donors List" for months before Judicial Watch learned of its existence at the May 28, 1997 deposition of Graham Whatley. Clinton Justice Department counsel made repeated false representations that they were "surprised" by this revelation.(322)

The lies by Clinton Administration officials continued. During his June 13, 1997 Senate confirmation hearing for the post of Deputy Attorney General, U.S. Attorney Eric Holder testified that he had no involvement in this case and had not signed any pleadings or memoranda.(323) While a cursory review of the court file shows the contrary, taken at face value, Holder's testimony likely means that this case—which has paramount political and national security ramifications—is being run by "Main" Justice—and out of the Attorney General's office.

This is a massive conflict-of-interest. According to a memorandum recently produced in another Judicial Watch anti-corruption case, the DNC requested Attorney General Reno's assistance in raising $40 million for the 1996 Clinton-Gore re-elec-

tion campaign.[324] Thus, it appears Attorney General Reno herself is most likely involved in the Clinton campaign fundraising scandal.

In light of this memorandum, and Attorney General Reno's refusal to appoint an Independent Counsel despite overwhelming evidence of criminal misconduct on the part of Clinton Administration officials, and her Department's obvious conflict of interest, it would certainly appear that the litigation misconduct in this case is attributable to partisan political loyalties to the Clinton Administration.

IV. Clinton's Fundraising Push Likely Resulted in Breaches of National Security

As Judicial Watch uncovered evidence that seats on Clinton Commerce Department trade missions were being sold in exchange for campaign contributions, it also uncovered alarming evidence about likely breaches of national security. In the four (4) years that Judicial Watch has investigated this unlawful sale of taxpayer-financed, government services, it also discovered John Huang, the removal by Ira Sockowitz, a confidante of both Huang and Ginger Lew, of classified, national security documents from a Commerce Department safe, the removal of national security information by Secretary Brown's Chief of Staff, William Ginsburg, curious links between former Clinton Commerce appointees and Iridium World Communications, Ltd., and more. Although Judicial Watch is only at an interim stage in its investigation of these sensitive issues, the potential national security breaches already discovered raise ominous questions about further unlawful conduct by the President and his Administration.

A. John Huang, Accused Spy, Had A Role in Commerce Trade Missions and Other Clinton Fundraising Schemes

While investigating the sale of taxpayer-financed trade mission seats by the Clinton Commerce Department, Judicial Watch uncovered John Huang, the Clinton fundraiser/Commerce operative believed by many to be an agent for the Chinese Government.[325] To date, only Judicial Watch has deposed Huang under oath.[326] This deposition uncovered Huang's lies and sparked the Clinton controversy called "Chinagate." Not surprisingly, the Clinton Administration and its allies at the DNC did their best to prevent Huang from testifying under oath, and Huang himself went into hiding from federal agents trying to serve him with a deposition subpoena.[327] In attempting to learn of Huang's whereabouts, DNC officials later lied to the Court.[328]

Indeed, Judicial Watch has learned that, not only was Secretary Brown ordered by the White House to sell seats on (Commerce Department trade missions, but he was also forced to hire Huang. Ms. Hill testified that Mrs. Clinton was involved in Huang's placement at the Clinton Commerce Department:

> Q: And he told you, Secretary Brown, did he not, that John Huang was forced into the Commerce Department by the Hillary Rodham Clinton Arkansas group at the White House? He told you that, didn't he?
> A: Yes, sir.[329]

Indeed, as we now know, Huang was the "top priority for placement" in the new Clinton Administration by the Lippo Group, the Jakarta-based business conglomerate that has substantial dealings and joint operations with the Chinese Government, and is headed by the Riady family.[330] James and Mochtar Riady have been longtime friends and strong financial supporters of the Clintons dating back to when President Clinton was the Governor of Arkansas. Mochtar and James Riady are believed by U.S. authorities to "have had a long-term relationship with a Chinese intelligence agency."[331] Before being placed at Commerce, Huang was the top U.S. executive for Lippo, and "the political power that advise[d] the Riady family on issues and where to make contributions."[332]

In fact, it is now clear that Huang participated in the planning of Clinton Commerce Department trade missions,[333] and had extensive telephone contacts with Asian and American business people, diplomats, lawyers, and fundraisers, many of whom, such as Webster Hubbell and Joe Giroir, had ties to Huang's former employer, the Lippo Group.[334] In February 1997, *The Washington Times* reported that "[t]elephone records show that while at Commerce, he made and received dozens of calls from Lippo lobbyists and executives while he worked on sensitive trade missions."[335]

Huang also participated in departmental meetings on Asia policy[336] and, astonishingly, received more than a hundred CIA intelligence briefings, many on matters related to areas that his old employers at the Lippo Group would have an interest.[337] While working for the Clinton Commerce Department Huang made "more than 400 telephone calls . . . to Lippo and some of its business representatives. . . ."[338]

Huang also made a number of visits, while supposedly working for the Clinton Commerce Department, to the offices of Stephens, Inc., a firm that had close ties to the Lippo Group. Paula V. Greene, a former secretary for Stephens Inc., testified before Senator Fred Thompson's fundraising investigation that:

> Huang had unrestricted use of the telephone, copier and fax machine in the spare office when he stopped by "sometimes two, three times a week, perhaps not every week," she said. But Ms. Greene said she did not know whom he called or whether Huang transmitted any faxes.(339)

The Clinton Administration gave Huang access to top-secret information apparently without even conducting an overseas background check on him.(340) Moreover, press reports indicate that Huang "held top-secret clearances for three years, although he worked at Commerce for only 18 months," and "initially was issued a top-secret clearance in January 1994, five months *before* he resigned as a top executive at the . . . Lippo Group."(341) Electronic intercepts have also apparently confirmed that, at a minimum, he committed economic espionage by passing government secrets to the Lippo Group.(342) Indeed, some believe he may have endangered the lives of U.S. intelligence agents.(343) *The Washington Post's* Bob Woodward reported on November 14, 1997, that the FBI had uncovered "reports considered reliable but unconfirmed that Huang, while serving as a senior Commerce Department official in the Clinton administration, passed a classified document to the Chinese government."(344)

Coupled with the risk of this Clinton-appointee's activities to national security, was his illegal fundraising at the Clinton Commerce Department. Huang testified at his deposition that he had little contact with the DNC and the Clinton White House while at the Clinton Commerce Department.(345) In fact, he was in regular contact with top Democratic fundraisers, and often supplied them with names of prospective donors in the Asian-American community, and was the "king-maker" for Asian-American political appointments in the Clinton Administration.(346) The DNC even credited him for raising money while working at the Clinton Commerce Department.(347)

Also, contrary to his Judicial Watch testimony, Huang was a frequent White House visitor and often talked with key White House officials, including President Clinton. According to logs kept by the Secret Service, Huang made at least 78 visits to the White House beginning July 1, 1995, at least a dozen of which were while he was working at the Commerce Department.(348) He was also in regular contact with top Democratic fundraisers, and often supplied them with names of prospective donors in the Asian–American community.(349) Indeed, President Clinton personally lobbied on Huang's behalf to ensure that he would be placed in a high-level DNC fundraising post after leaving Commerce.(350)

Despite Huang's false and misleading testimony in the Judicial Watch lawsuit, and his unlawful fundraising activities,(351) the Clinton Justice Department has yet to prosecute, much less interview him. In fact, Judicial Watch has seen first-hand the Justice Department's complicity in covering-up these offenses. Just one among many examples—the Clinton Justice Department's Criminal Division Chief until recently was John Keeney. Keeney's son is one of Huang's personal lawyers, and represented Huang during his Judicial Watch deposition.(352) Huang only surfaced because of the relentless due diligence of Judicial Watch—and only after a nationwide manhunt in which he temporarily evaded service of a court subpoena with the cooperation of the White House and the DNC.(353)

A final, important note. By testifying nearly two years ago in Judicial Watch's lawsuit against the Clinton Commerce Department, Huang waived any Fifth Amendment rights he may have been able to assert. Thus, Huang cannot now "take the Fifth." Judicial Watch has moved the Court to continue Huang's deposition.

B. Ira Sockowitz, Special Assistant at Commerce, Misappropriated Government Secrets on Encryption and Satellite Technology and Likely Harmed National Security

In addition to the sale of seats on trade missions and the mysterious operations of John Huang at the Commerce Department, in 1996 the Clinton Administration abruptly gave Commerce the power to control exports of sensitive technology to China. This came as a shock to many experts because it is generally believed that, unlike the State Department, which served as the technology gatekeeper in the past, the Commerce Department is not equipped to properly guard against national security breaches. In fact, according to a top defense expert in the Bush Administration, "[i]t was tantamount to a complete overthrow of the old export-control regime."(354)